

Robert Duncan

June 7, 2012

<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA</p> <p>STATE OF TEXAS )  )  ) VS. ) NO. 12-CV-128  ) (DST, RMC, RLW)  ) ERIC H. HOLDER, JR., ) In his official ) Capacity as Attorney ) General of the United ) States, ET AL )</p> <p>***** ORAL DEPOSITION OF ROBERT DUNCAN *****</p> <p>ANSWERS AND DEPOSITION OF ROBERT DUNCAN, a witness called by the United States taken before Janalyn Reeves, Certified Shorthand Reporter for the State of Texas, on the 7th day of June, 2012, between the hours of 9:30 a.m. and 4:25 p.m., in the offices the US Attorney, 816 Congress Avenue, Suite 1000, Austin, Texas, pursuant to the agreement of counsel for the respective parties as hereinafter set forth.</p>	<p>1 INDEX 3</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4</p> <p>5 ROBERT DUNCAN</p> <p>6 Examination by Ms. Maranzano ..... 6</p> <p>7 Examination by Mr. Brazil. .... 242</p> <p>8</p> <p>9 Signature and Changes..... 254</p> <p>10 Reporter's Certificate..... 256</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 APPEARANCES 2</p> <p>2</p> <p>3 FOR THE PLAINTIFF, STATE OF TEXAS:</p> <p>4 OFFICE OF THE ATTORNEY GENERAL:</p> <p>5 By: MR. PATRICK SWEETEN</p> <p>6 - and -</p> <p>7 MR. JAY DYER</p> <p>8 209 West 14th Street</p> <p>9 Austin, Texas 78701</p> <p>10 PH: (512) 936-6432</p> <p>11</p> <p>12 FOR THE DEFENDANT:</p> <p>13 DEPARTMENT OF JUSTICE</p> <p>14 By: MS. JENNIFER MARANZANO</p> <p>15 - and -</p> <p>16 MR. VICTOR WILLIAMSON</p> <p>17 950 Pennsylvania Avenue, NW</p> <p>18 Room 7161 NWB</p> <p>19 Washington, DC 20530</p> <p>20 PH: (202) 305-0185</p> <p>21</p> <p>22 FOR THE INTEVENORS:</p> <p>23 BRAZIL &amp; DUNN, LLP</p> <p>24 By: MR. SCOTT BRAZIL</p> <p>25 4201 Cypress Creek Parkway</p> <p>Suite 530</p> <p>Houston, Texas 77068</p> <p>Ph: (281) 580-6310</p>	<p>4</p> <p>2 NO. EXHIBITS</p> <p>3 DESCRIPTION PAGE</p> <p>4 520 Notice of Deposition 35</p> <p>5 521 House Bill 48</p> <p>6 522 Interim Report 58</p> <p>7 523 Online History 82</p> <p>8 524 HB 218 Record 126</p> <p>9 525 Senate Rules 137</p> <p>10 526 Letter 149</p> <p>11 527 Letter 149</p> <p>12 528 Senate Journal 163</p> <p>13 529 Email 170</p> <p>14 530 Senate Bill 14 172</p> <p>15 531 Letter 215</p> <p>16 532 Letter 215</p> <p>17 533 Senate Rules 219</p> <p>18 534 Indiana Voter ID Law 221</p> <p>19 535 SB 14 Hearing Transcript 223</p> <p>20 536 Senate Journal 228</p> <p>21</p> <p>22 PREVIOUSLY MARKED EXHIBITS</p> <p>23 3 Letter 98</p> <p>24 28 HB 218 79</p> <p>25 29 SB 362 105</p>



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<p>1 MS. MARANZANO: Good afternoon, Senator 2 Duncan. My name is Jennifer Maranzano. I'm 3 representing the defendant, Attorney General Eric 4 Holder, in this matter. Can you please -- 5 MR. SWEETEN: I'm sorry. Can we do 6 introductions? I would like to make sure the record is 7 clear on who is here for whom. 8 MS. MARANZANO: Yes. Why don't we go around 9 the room and everybody state their name and who they are 10 representing. 11 MR. WILLIAMSON: Victor Williamson, 12 Department of Justice. 13 MR. BRAZIL: Scott Brazil for the Kennie 14 Intervenor's. 15 MS. MARANZANO: Jennifer Maranzano with 16 defendant, Attorney General Eric Holder. 17 MR. SWEETEN: I'm Patrick Sweeten with the 18 State of Texas and on behalf of the State and on behalf 19 of the witness, Senator Robert Duncan. And attorney Jay 20 Dire who will be joining us very shortly. 21 MS. MARANZANO: Thank you. 22 SENATOR ROBERT DUNCAN, 23 having being first duly sworn, testified as follows: 24 25</p>	<p>1 A. 90s, 1995, '94. 2 Q. And the cases on legislative intent, can you tell 3 me about those? 4 A. That was a case on a workers' comp bill I 5 believe, back in 1994. And I was deposed on what was 6 the -- I can't remember the specific issue, but it had 7 something to do with workers' comp. 8 Q. Were you deposed in your capacity as a senator? 9 A. No, I wasn't a senator at this time. 10 Q. Were you deposed as a member of the House of 11 Representatives? 12 A. Correct. 13 Q. And the other cases you were deposed in? 14 A. They were private cases, as I was deposed as a 15 person with knowledge, specialized knowledge in a 16 certain area or field. 17 Q. Okay. And what field or area? 18 A. That was workers' compensation. 19 Q. Okay. And the case in which you testified -- in 20 which you were deposed that dealt with legislative 21 intent, can you tell me what you mean by that 22 legislative intent? 23 A. Well, they were -- the lawyers on one side 24 were -- there had been an amendment to a bill that I had 25 handled. And they were trying to -- and I don't even</p>
<p>1 EXAMINATION 2 BY MS. MARANZANO: 3 Q. Senator, can you please state your name for the 4 record? 5 A. Robert Duncan. 6 Q. Have you been deposed before? 7 A. Yes. 8 Q. And what was the -- what case was that? 9 A. I'm an attorney, so I appeared as an expert on 10 things before. I was also deposed in the redistricting 11 case by Senator Davis's attorney that was -- occurred 12 here in 2011 I believe, or '12. 13 Q. How many times have you been deposed? 14 A. I don't know. I've had depositions on 15 legislative intent back when I was in the House. So I 16 would say four or five times, but I can't remember 17 specifically. 18 Q. And one was the redistricting case in 2011? 19 A. Correct. 20 Q. And one was a case where you were an expert, did 21 you say? 22 A. Well, more or less, yes, on workers' 23 compensation. It's an area that I had some expertise a 24 long time ago. Not anymore. 25 Q. And when was that?</p>	<p>1 remember the bill. And it was workers' comp -- may have 2 been something else. I can't remember. But it was -- 3 they were trying to understand what the nature of the 4 legislation and what was in it. That's all I really 5 remember about it. 6 Q. Do you remember the nature of that case? 7 A. No. 8 Q. And the other cases, the other cases for which 9 you were deposed, other than this case that we're 10 talking about right now where you testified about the 11 legislative intent of the workers' compensation bill and 12 the redistricting case, you said you were deposed in 13 your capacity as an individual, not as a legislator; is 14 that correct? 15 A. In the -- I don't understand the question. I'm 16 sorry. 17 Q. So there were two times, I think, that we've 18 talked about where you were deposed in your capacity as 19 a legislator; is that correct? 20 A. Twice, yes. 21 Q. And the other times you were deposed, was that in 22 your capacity as an individual? 23 A. Correct. 24 Q. Okay. Well, I'm going to tell you a little bit 25 about how this is going to go today. It sounds like you</p>



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<p>9</p> <p>1 are very familiar with depositions. You've been placed 2 under oath so it's important to testify truthfully, 3 accurately and completely. The court reporter is taking 4 a transcript of everything we say, so it's important 5 that you wait until I finish asking a question before 6 you answer and I will wait for you to finish your answer 7 before I ask the next question. Please respond verbal 8 to my questions instead of nodding or shaking your head. 9 I'll try to ask you clear questions. If you don't 10 understand anything I say, please let me know. If you 11 wish to take a break, just let me know and we'll go 12 ahead and take a break. If there's a question pending, 13 I would ask you to just finish that question before we 14 take a break. Do you understand these instructions? 15 A. Yes. 16 Q. Are you on any medication today that would affect 17 your ability to testify truthfully, accurately and 18 completely? 19 A. No. 20 Q. Is there any other reason why you can't testify 21 truthfully, accurately and completely today? 22 A. No. 23 Q. Today I may use the terms voter ID and photo ID 24 interchangeably. I want you to interpret these terms 25 broadly to mean a requirement that a voter present a</p>	<p>11</p> <p>1 Q. What were the nature of those proceedings? 2 A. The -- one was in connection with this time that 3 I was an expert on workers' compensation issue in a 4 civil case in district court in Texas, the State 5 district court. The other time was an issue that arose 6 from a lawsuit against Farmers Insurance. And I was 7 subpoenaed to testify in that case with regard to 8 negotiations and mediation that I conducted as a member 9 of the legislature trying to resolve that dispute. It 10 was over homeowner's insurance. And I testified briefly 11 in Travis County district court on that case. 12 Q. And the first case you said was in State district 13 court? 14 A. Right. 15 Q. And the second one was in Travis County district 16 court -- 17 A. State court, yes. 18 Q. Oh, the State court. Have you ever been a party 19 to a lawsuit? 20 A. No. 21 Q. Other than the redistricting case which we talked 22 about, have you ever been involved in a case in which 23 the State of Texas was either a plaintiff or defendant? 24 A. No. 25 Q. What did you do to prepare for today's</p>
<p>10</p> <p>1 form of identification, whether it has photo on it or 2 not, when voting in person before being permitted to 3 cast a regular ballot. Do you understand that? 4 A. Yes. 5 Q. When I refer to minority voters today, I mean 6 voters who are non-white, non-Anglo. Do you understand 7 that term? 8 A. As you laid it out, yes. 9 Q. Thank you. Are you represented by counsel today? 10 A. Yes. 11 Q. And who is that? 12 A. The Attorney General of the State of Texas. 13 Q. And when did that representation begin? 14 A. Well, I would assume it began at any point in 15 time where, I guess when this litigation -- for the 16 purpose of this litigation, when this litigation 17 occurred, was filed. I think at any time I confer with 18 the Attorney General on any issue, I think that there's 19 the attorney/client relationship exists. 20 Q. We've talked a little bit about the times in 21 which you've been deposed. Have you ever testified in 22 court? 23 A. Yes. 24 Q. And how many times have you testified? 25 A. Twice.</p>	<p>12</p> <p>1 deposition? 2 A. Well, I had a brief visit with Mr. Sweeten over 3 the phone and then briefly this morning before we came 4 in here. And I reviewed parts of the transcript of the 5 hearings in 2009-2011. 6 Q. Which parts of the transcript did you review? 7 A. Mainly the parts were in the beginning where I 8 was mainly involved in those issues. 9 Q. The beginning of the legislative debate? 10 A. Right. 11 Q. Are you referring to the Committee of the Whole 12 debate? 13 A. Right. 14 Q. And your meetings with Mr. Sweeten, how long did 15 you talk to him on the phone? 16 A. 20 minutes. 17 Q. Was anybody else on the phone? 18 A. No, not that I know of. There may have been 19 somebody else from his office, but I can't remember who 20 it was. I just remember Mr. Sweeten. 21 Q. Other than your attorneys, have you spoken to 22 anybody about your deposition today? 23 A. Other than scheduling it, no. 24 Q. Have you spoken to anyone who has been deposed in 25 this case?</p>



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<p>13</p> <p>1 A. Not about this -- about the case or the 2 deposition. 3 Q. Have you reviewed any transcripts from anybody 4 who's been deposed in this case? 5 A. No. 6 Q. Did you bring any notes or documents with you 7 today? 8 A. No. 9 Q. Is it your understanding that you, as a state 10 legislator, may invoke legislative privilege? 11 A. Yes. 12 Q. Will you be invoking the legislative privilege 13 over your deposition testimony today? 14 A. Yes. 15 MS. MARANZANO: I would like to note, for 16 the record, that we've received a court order on June 17 5th about what topics are covered by the legislative 18 privilege and what topics are not covered by the 19 legislative privilege. I'm going to ask questions in 20 compliance with that court order. Obviously your 21 attorney can object to questions that he believes invade 22 the legislative privilege and give you instructions 23 accordingly. But I want to say, for the record, that 24 we're reserving our right to appeal that decision at the 25 appropriate juncture.</p>	<p>15</p> <p>1 A. I don't have a legal specialization. I primarily 2 am involved in litigation, personal injury and 3 commercial. 4 Q. How long have you served in the Senate? 5 A. I was elected in the special election and sworn 6 in in December of 1996. 7 Q. And you've served continuously since then? 8 A. Yes, ma'am. 9 Q. Have you held other elected offices? 10 A. Yes, ma'am. 11 Q. And what are those? 12 A. I was a member of the Texas House of 13 Representatives from 1993 until 1996 when I resigned to 14 run for the Senate. 15 Q. What made you decide to seek public office? 16 A. In essence, public service. 17 Q. Can you tell me about the population of the 18 district that you currently serve pre-redistricting? 19 A. Well, be more specific. 20 Q. Do you have any sense of the population 21 demographics? 22 A. I would be speculating on them. I know that the 23 region of the state I represent has Anglo and Hispanic 24 influence and Hispanic influence is growing. 25 Q. Any sense of what percentage, approximately?</p>
<p>14</p> <p>1 BY MS. MARANZANO: 2 Q. Can you describe your educational background for 3 me? 4 A. Yes. I completed a BS degree in 1976 in 5 agricultural economics, a JD degree from the Texas Tech 6 University School of Law in 1981. And that's generally 7 it. 8 Q. Are you currently licensed to practice law? 9 A. Yes. 10 Q. And in what states are you admitted to the bar? 11 A. Texas. 12 Q. Any others? 13 A. Just federal courts and Supreme Courts, 5th 14 Circuit. 15 Q. And your bar license is currently active? 16 A. Yes. 17 Q. Can you tell me every legal job you've had since 18 graduating from law school? 19 A. Yes. I served as an associate in the law firm of 20 Crenshaw, Dupree &amp; Milam until 1984. And then I was a 21 partner in that firm and have been a partner in that 22 firm since then and continue today to be a partner in 23 that firm. 24 Q. And do you have a special area you work on in 25 that firm?</p>	<p>16</p> <p>1 A. Well, I would be guessing so I don't want to 2 speculate on that. I've seen the numbers and know the 3 numbers. But from a general list, but I don't want to 4 lay a number out without being specific. Those 5 demographics exist and change periodically. But 6 generally we have -- in rural West Texas we're Hispanic 7 and Anglo primarily, with African-American as well. 8 Q. Do you do any outreach in your district that's 9 geared particularly at minority communities? 10 A. I try to be available and outreach to all 11 communities. And yes, I do. I work very well with 12 Hispanic leaders and members of the Hispanic community, 13 as well as the African-American community. 14 Q. What do you mean by that, "you work well with 15 leaders of the Hispanic community"? 16 A. Well, I support their events and meet with them 17 on a regular basis. They support me. I recently had a 18 fundraiser. It was supported by and sponsored by 19 Hispanic leaders in the Lubbock community. And so, you 20 know, I try to -- my district is very broad and verse 21 and I try to do the best I can to meet the needs of the 22 members of my constituents I represent. 23 Q. Would you say that Hispanics are an important 24 constituency in your district? 25 A. They are.</p>



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<p>17</p> <p>1 Q. Would you say African-Americans are an important 2 constituency in your district? 3 A. They are. 4 Q. What committees do you serve on in the Texas 5 Senate? 6 A. I chair the State Affairs Committee. I serve on 7 the Finance Committee, Higher Education Committee, on 8 Jurisprudence -- Committee on Jurisprudence and, you 9 know, various select committees that are appointed 10 during the interim. I don't think I left anything out. 11 Q. You what? 12 A. I think I covered everything. 13 Q. Okay. How long have you served on the State 14 Affairs Committee? 15 A. I was initially appointed to that committee in 16 2003. And in 2000 -- excuse me, 2001 -- no, 2003. I'm 17 sorry, 2003. And then I became chair in 2004 or '05, 18 2004, I believe. 19 Q. How did you become chair? 20 A. The Lieutenant Governor appoints the chairman of 21 various committees. 22 Q. And who was the Lieutenant Governor at that time? 23 A. Lieutenant Governor Dewhurst, David Dewhurst. 24 Q. What were the -- did you say you were on a couple 25 select committees?</p>	<p>19</p> <p>1 Q. Putting aside voter ID bills, how many election 2 related bills have you sponsored? 3 A. That's a good question. I don't know the answer 4 I have, because as chairman of the committee we 5 interface with the Secretary of State quite a bit and 6 during the terms that I have served as chairman we've 7 implemented HAVA, we've implemented -- last session we 8 did the MOVE Act. So we've worked with the Secretary of 9 State's office. And typically I will sponsor those 10 bills, or a lot of times Leticia Van de Putte will do 11 that. She handles a lot of legislation and she and I 12 have worked together on those issues with regard to 13 election bills. 14 Q. Is Senator Van de Putte also on the State Affairs 15 Committee? 16 A. Yes. 17 Q. And so am I understanding you correctly, it's a 18 number of legislation bills you've sponsored? 19 MR. SWEETEN: You can refer to matters of 20 the public record when answering this. 21 BY MS. MARANZANO: 22 Q. We're just talking about ones that you've 23 publicly sponsored? 24 A. I can't give you an amount. That would be in the 25 record. You can look that up.</p>
<p>18</p> <p>1 A. Right. 2 Q. What were those? 3 A. Well, I've been on several. But mostly involving 4 school finance, public school finance. 5 Q. Anything else? 6 A. That's all. I think that's really, mainly it. 7 Q. And what's the purpose of a select committee? 8 A. Well, generally a select committee has members of 9 both the House and the Senate to study an issue in the 10 interim and often times they'll also have members of the 11 general public, as school finance did. 12 Q. Are they always held during interim sessions? 13 A. Normally. I can't recall of one not. There's no 14 requirement of that, but it would be unusual to have a 15 select committee operating during a 140-day general 16 session. 17 Q. Other than the Committee of the Whole, is the 18 State Affairs Committee the only Senate committee that 19 considered voter ID bills? 20 A. To my recollection, I believe that to be the 21 case, as far as I remember. 22 Q. If a Senator wishes to introduce a bill that's 23 going to be heard by the State Affairs Committee, do 24 they usually confer with you about that bill? 25 A. No.</p>	<p>20</p> <p>1 Q. Right. But are you saying you can't give me an 2 amount because it's more than a few? 3 A. Well, that and I've carried a lot of bills over a 4 lot of things in the 14 or 15 years. So I just can't 5 tell you specifically what they are. I can tell you 6 like I did, the general -- the bills that basically are 7 mandated to be -- by Congress to be a part of the State 8 systems, typically I'll handle those. But not always. 9 It depends if there's another member who wants to do 10 that, that's fine with me. 11 Q. And how does that work, if a federal law passes 12 that the State needs to implement, does the Secretary of 13 State usually reach out to you? How do you end up 14 proposing a law to implement HAVA or the MOVE Act, as 15 you referenced? 16 MR. SWEETEN: I'm going to object to the 17 question to the extent it calls for him to reveal his 18 mental impressions, his thoughts, his motivation about 19 legislation or the furtherance of the legislative 20 process. I'm going to instruct you not to answer to the 21 extent that your answer would implement those things. 22 You're free to refer to matters of the public record. 23 Also I'm going object to the question as vague and 24 compound. 25 A. I'll follow his instruction.</p>



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<p>21</p> <p>1 Q. (By Ms. Maranzano) Okay. There's nothing on the 2 public record that you could tell me about how the State 3 goes about implementing a federal election law that 4 passes?</p> <p>5 A. Well, the public -- yeah, there is. If you look 6 at the record of our committee. When a bill is passed, 7 or introduced and then it goes to the hearing process. 8 And so there's a recorded testimony, there is evidence 9 that's put in the record and all of that is a part of 10 the legislative record and that's where it is. It's 11 pretty clear on how it goes about what the testimony is, 12 Secretary of State will testify. Typically the expert 13 in their office will testify as to the need for the 14 bill. And that's how that works.</p> <p>15 Q. Okay. Are there primary areas of focus, of 16 legislative focus that you work on?</p> <p>17 A. Not really. I've had pretty -- well, work in a 18 lot of different areas.</p> <p>19 Q. Other than being the chair of the State Affairs 20 Committee, do you have any leadership roles in the 21 Senate?</p> <p>22 A. Today, that's it.</p> <p>23 Q. In the past have you had other leadership roles?</p> <p>24 A. I was chairman of the Jurisprudence and was 25 president pro tem.</p>	<p>23</p> <p>1 Q. Do you have any experience related to election 2 administration?</p> <p>3 A. No.</p> <p>4 Q. Have you ever served as a poll worker?</p> <p>5 A. No.</p> <p>6 Q. While you -- well, let me ask you this. Do you 7 vote in person?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. Have you ever witnessed any problems while you've 10 been voting?</p> <p>11 A. No.</p> <p>12 Q. Have you ever seen anybody try to impersonate 13 another voter, that you're aware of, while you've been 14 voting?</p> <p>15 A. No.</p> <p>16 Q. Have you ever seen a non-citizen trying to vote 17 while you've been voting, that you're aware of?</p> <p>18 A. I wouldn't be aware.</p> <p>19 Q. Have you ever challenged a voter's eligibility?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with a group called the American 22 Legislative Exchange Council, or ALEC?</p> <p>23 A. I've heard of them.</p> <p>24 Q. Have you ever had any affiliation with them?</p> <p>25 A. No.</p>
<p>22</p> <p>1 Q. And when were you chair of the Jurisprudence 2 Committee?</p> <p>3 A. 2003 and 2000 -- 2001, 2003, I think.</p> <p>4 Q. 2001 to 2003?</p> <p>5 A. I think it was two sessions.</p> <p>6 Q. Approximately. Okay. When were you president 7 and pro tem?</p> <p>8 A. 2011. No, 2009. Sorry. Sorry.</p> <p>9 Q. What are the responsibilities of being president 10 pro tem?</p> <p>11 A. Well, I think the main responsibility is the 12 constitutional position. And should the Lieutenant 13 Governor not be in the state or not be able to act, 14 well, then, the pro tem immediately succeeds that 15 position. If the Lieutenant Governor leaves office, the 16 president pro tem then must call a special session to 17 elect a presiding officer. That's primarily -- when the 18 Lieutenant Governor and the governor are out of the 19 state temporarily, then the president pro tem moves into 20 the head of the government. So it's primarily what it's 21 responsibilities include.</p> <p>22 Q. Do you have any experience related to election 23 law?</p> <p>24 A. Other than serving on the State Affairs Committee 25 no.</p>	<p>24</p> <p>1 Q. Have you ever gone to any of their meetings?</p> <p>2 A. No.</p> <p>3 Q. Have you ever received any documents or 4 communications from them?</p> <p>5 A. Not that I know of. You know, I'm not a member 6 so I don't get their documents. If they send something 7 generally to everybody in the legislature, maybe so. I 8 don't know. I don't recall seeing anything. It might 9 not get to me.</p> <p>10 Q. Are you familiar with a group called the National 11 Conference of State Legislators?</p> <p>12 A. Yes, ma'am.</p> <p>13 Q. Do you have any affiliation with that group?</p> <p>14 A. With who?</p> <p>15 Q. National Conference of State Legislators.</p> <p>16 A. I think, like all legislators, we're probably 17 members, the legislature is. But I don't have any 18 particular, individual affiliation or office or anything 19 like that. I don't go to the meetings other than, I 20 think I've given a speech at one. And I think I got an 21 award when I was in the House and I went to one as a 22 result of that award.</p> <p>23 Q. Can you tell me when you gave the speech?</p> <p>24 A. I think it was in 2009, something like that 2008 25 or '09.</p>



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<p>25</p> <p>1 Q. Do you -- what was that about?</p> <p>2 A. Retirement benefits.</p> <p>3 Q. And what did you get an award for?</p> <p>4 A. The National Republican Legislators Award,</p> <p>5 something like that, when I was in the House.</p> <p>6 Q. When was that?</p> <p>7 A. '94 or '95, 95.</p> <p>8 Q. And was it for anything in particular?</p> <p>9 A. No.</p> <p>10 Q. Just being a good legislator?</p> <p>11 A. Not sure why I got it.</p> <p>12 Q. Okay. Have you received materials from the</p> <p>13 National Council of State Legislators?</p> <p>14 A. I'm sure we have over the -- overtime.</p> <p>15 Q. Do you know if any of them involved voter ID?</p> <p>16 A. I don't know.</p> <p>17 Q. Do you have any familiarity with a group called</p> <p>18 Safe Texas?</p> <p>19 A. No.</p> <p>20 Q. Do you know who they are?</p> <p>21 A. No.</p> <p>22 Q. Do you have any familiarity with a group called</p> <p>23 Secure and Fair Elections in Texas?</p> <p>24 A. No.</p> <p>25 Q. Are you familiar with someone by the name of</p>	<p>27</p> <p>1 A. Yes.</p> <p>2 Q. Who is Mr. Mecler?</p> <p>3 A. He's a member of the SREC.</p> <p>4 Q. And what is the SREC?</p> <p>5 A. State Republican Executor's Committee.</p> <p>6 Q. Have you had any --</p> <p>7 A. And I think he's also a member of the -- he's on</p> <p>8 the Texas Department of Criminal Justice Board as well,</p> <p>9 I believe.</p> <p>10 Q. I'm sorry. I didn't catch that?</p> <p>11 A. The Texas Department of Criminal Justice Board, I</p> <p>12 think he's on that, too.</p> <p>13 Q. Have you had any communications with Mr. Mecler</p> <p>14 about voter ID?</p> <p>15 A. No. Not that I recall.</p> <p>16 Q. Are you familiar where someone by the name of</p> <p>17 Bill Nobel?</p> <p>18 A. Bill who?</p> <p>19 Q. Nobel.</p> <p>20 A. No.</p> <p>21 Q. Do you know someone by the name Eric Opiela?</p> <p>22 A. No.</p> <p>23 Q. Linda Rogers?</p> <p>24 A. No.</p> <p>25 Q. Are you familiar with someone by the name of</p>
<p>26</p> <p>1 Melinda Frederick?</p> <p>2 A. No.</p> <p>3 Q. Are you familiar with someone by the name of Tony</p> <p>4 Ann Dashiell, D-A-S-H-I-E-L-L?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Do you know someone by the name of Russ Durstine?</p> <p>7 A. Durstine, yes, I know Russ.</p> <p>8 Q. Can you tell me who he is?</p> <p>9 A. Russ is, I think the -- isn't he from San Angelo.</p> <p>10 I think Russ is from San Angelo, which is in my</p> <p>11 district. Or he's either that or he's active in the</p> <p>12 Republican Party Chairman's Association. One of those</p> <p>13 two. I think Russ is a constituent from San Angelo.</p> <p>14 Q. Have you had any communications with Mr. -- say</p> <p>15 his last name for me again?</p> <p>16 A. Durstine.</p> <p>17 Q. Durstine. About voter ID?</p> <p>18 A. No. Probably not.</p> <p>19 Q. Probably not?</p> <p>20 A. Probably not.</p> <p>21 Q. Are you familiar with someone by the name of</p> <p>22 Barbara Larson?</p> <p>23 A. No.</p> <p>24 Q. How about -- are you familiar with someone by the</p> <p>25 name Tom Mecler?</p>	<p>28</p> <p>1 Skipper Wallace?</p> <p>2 A. Yes.</p> <p>3 Q. And who is Skipper Wallace?</p> <p>4 A. Skipper Wallace is the person who is affiliated</p> <p>5 or associated with the Republican County Chair's</p> <p>6 Association, I believe.</p> <p>7 Q. Do you have any communications with Mr. Wallace</p> <p>8 about voter ID?</p> <p>9 A. Not other than -- you know, I believe Mr. Wallace</p> <p>10 probably testified in front of the committee. I would</p> <p>11 assume that he did because he did on a number of</p> <p>12 different issues. He would be the person who would</p> <p>13 testify in front of the State Affairs Committee on</p> <p>14 election issues and things like that.</p> <p>15 Q. Did you have any communications, apart from his</p> <p>16 testimony, from Mr. Wallace about voter ID issues?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Are you familiar with someone by the name of</p> <p>19 Maria Martinez?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with someone named Catherine</p> <p>22 Englebreth?</p> <p>23 A. Catherine who?</p> <p>24 Q. Englebreth.</p> <p>25 A. No.</p>



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Robert Duncan

June 7, 2012

<p>29</p> <p>1 Q. Have you heard of an organization called True to 2 Vote? 3 A. No. 4 Q. Have you heard of an organization called the King 5 Street Patriots? 6 A. Yes. 7 Q. Do you have any affiliation with them? 8 A. No. 9 Q. Did you have any communications with the King 10 Street Patriots about voter ID? 11 A. If I did it would have been as an entity or a 12 person who represented that entity testifying before the 13 committee. 14 Q. I think I understand you. But just to be clear, 15 you're saying any communications you would have had with 16 them would have been them testifying at the State 17 Affairs Committee? 18 A. Right. I don't recall ever having -- and I had 19 very few meetings like that on issues like that in my 20 office. It would be something that would -- typically I 21 would just say come to the committee and talk to the 22 committee. 23 Q. Okay. So -- 24 A. So that would be my interface with those folks. 25 Q. And just to be clear, when you say "you have very</p>	<p>31</p> <p>1 A. No. 2 Q. Like a couple a months? 3 A. I'm not going to guess. But, you know, I will 4 say this. Typically in Austin, you know, I will come 5 during the interim once, maybe, a month for one day, 6 maybe two. Usually it's before -- because of a hearing. 7 Typically, if I have a meeting with someone it 8 will be, 90 percent of the time, an agency head over an 9 issue, whether it's a budget issue or an issue that I 10 have jurisdiction over in State Affairs or in some 11 committee or if I passed a bill. And if it's an 12 insurance bill I want to meet with the commissioner and 13 say, "What are you doing with regard to that?" Those 14 are the kinds of meetings I have in Austin. 15 In Lubbock I will have meetings from time to 16 time. I try to never turn down a constituent who wants 17 to come meet with me there. Or in San Angelo. I go to 18 Childress. I have 51 counties now. I had 46. So 19 it's -- you try to meet with your constituents, but at 20 the same time, logistics also cause us some issues 21 there. 22 Q. And you said your district was in Western Texas; 23 is that right? 24 A. Yes, ma'am. 25 Q. Can you describe, just very generally, the</p>
<p>30</p> <p>1 few meetings like that," what do you mean by that? 2 A. Well, I mean typically serving in the 3 legislature, serving on the finance committee, other 4 capacities. I'm very seldom in my office. And so -- in 5 fact, I'm never in the office. So I'll be in a 6 committee room or in hearing or, you know, typically on 7 the floor all day long. And so I typically don't 8 entertain a lot of in office meetings with people about 9 legislation pending before my committee. My standard 10 thing is come to the committee and testify. 11 Q. Got it. Can anybody come to the committee and 12 testify? 13 A. Yes. 14 Q. During the times of the year when you are not in 15 the legislative session, do you have meetings with 16 people about potential legislative issues? 17 A. From time to time. But, you know, not that many, 18 quite frankly. I mean, there may be constituents in 19 Lubbock or there may be something on workers' 20 compensation or, you know, from time to time people will 21 come to you with ideas. But that's probably like every 22 member, you know, has some meetings and dealings with 23 different trade organizations or work constituents. 24 Q. When you say "not that many," is it -- can you 25 just give me an approximate number?</p>	<p>32</p> <p>1 geographic area? 2 A. Sure. It's -- before redistricting, it was 46 3 counties that spanned from the Panhandle all the way 4 down to Eldorado, Texas. And the major -- the larger 5 cities would be Lubbock and San Angelo. Came near 6 Abilene and Amarillo and near Wichita Falls as well. 7 Q. Can you tell me your staff members who work for 8 you in your legislative capacity? 9 A. Yes. My chief of staff is Porter Wilson. At 10 that time my general council was Cory Pomeroy. The 11 director for State Affairs and also general council is 12 Jennifer Fagan. My staff person in charge of Article 2 13 and health and human service issues is Jennifer 14 Chambers. Sara Clifton is the staff person in charge 15 of -- at that time -- she was with me at this time, in 16 2011. And then numerous staff members that are -- that 17 I can't remember the names of that are interim hires or 18 rather, staff session hires, with regard to legal issues 19 and things like that that, you know, younger lawyers 20 that help us with the committee and briefing bills and 21 working through problems with bills in the committee. 22 Q. And for a couple of these people you said "at 23 that time," and you were referring to during the 2011 24 legislative session? 25 A. Right. That's legislation.</p>



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<p>33</p> <p>1 Q. Which of these staff worked on the voter ID 2 issue?</p> <p>3 A. Jennifer Fagan.</p> <p>4 Q. Anybody else?</p> <p>5 A. Probably not.</p> <p>6 Q. Do you know someone by the name of Megan LaVoie?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Who is Megan LaVoie?</p> <p>9 A. I'm sorry. Megan is -- handles the media for us 10 primarily. She's a law student who has just graduated 11 and studying for the bar now.</p> <p>12 Q. Is she a staff of yours?</p> <p>13 A. Yes, she still is. I just -- don't tell her I 14 forgot.</p> <p>15 Q. All right. How often do you communicate with 16 your staff during the legislative session?</p> <p>17 A. Daily.</p> <p>18 Q. And how do you usually communicate with them?</p> <p>19 A. Directly.</p> <p>20 Q. In terms of verbally?</p> <p>21 A. Right.</p> <p>22 Q. Do you ever e-mail with them?</p> <p>23 A. You know, other than "can you come to the 24 office," yes. "Would you send me -- send down a granola 25 bar," or "would you order me lunch." Just logistical</p>	<p>35</p> <p>1 Q. Do you delete them or do they automatically get 2 deleted?</p> <p>3 A. I don't know what happens to them, quite frankly. 4 The blackberry quit working so I had to replace it. And 5 because that technology is, more or less, going 6 obsolete, I replaced it with an iPhone. And I 7 definitely can't work that.</p> <p>8 Q. Me either, actually. Is there someone in your 9 office who maintains legislative records?</p> <p>10 A. You know, I guess everybody does. We don't 11 have -- we follow whatever the secretary of the Senate 12 tells us to do. I assume my chief of staff probably 13 handles most of that for the committee. It would have 14 been Jennifer Fagan.</p> <p>15 Q. So the secretary of the Senate issues a retention 16 policy about files?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 A. We follow that.</p> <p>20 MS. MARANZANO: Can we have this marked? 21 (Exhibit No. 520 was marked.)</p> <p>22 BY MS. MARANZANO:</p> <p>23 Q. Senator, I'm showing you what we're marking, for 24 the record, as deposition Exhibit 520. Can you just 25 take a look at this and let me know if it looks familiar</p>
<p>34</p> <p>1 things. I don't -- it's hard to communicate like that 2 when you're trying to listen to a hearing or something 3 like that. So at the end of the day, we meet before we 4 go home and we debrief about what's happened.</p> <p>5 Q. So when you do communicate with them, do you have 6 a blackberry or a phone?</p> <p>7 A. At that time I had a blackberry, but I didn't -- 8 we didn't communicate other than for the purpose of, 9 "can you bring me a granola bar" or, "somebody is here" 10 or whatever. And that's it.</p> <p>11 Q. Okay. Non-substantive communication?</p> <p>12 A. Yeah. I'm not very good at that thumb typing 13 stuff, plus I don't -- I think if a member is at the 14 committee dicos, you ought to be listening and not 15 communicating with folks. I feel strongly about that.</p> <p>16 Q. Do you ever use -- when you said you have -- I 17 think I didn't get an answer. Did you say you used a 18 blackberry when you do that?</p> <p>19 A. Right.</p> <p>20 Q. And is that a personal blackberry or work 21 blackberry?</p> <p>22 A. It was a personal blackberry or law firm 23 blackberry.</p> <p>24 Q. And do you save the messages on that?</p> <p>25 A. No.</p>	<p>36</p> <p>1 to you?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. And what is this?</p> <p>4 A. It is a notice of deposition for today.</p> <p>5 Q. And when you received this notice, can -- well, 6 did you receive this notice?</p> <p>7 A. Well, we did. And I instructed staff to assemble 8 the documents I think that are necessary to comply.</p> <p>9 Q. And did the staff turn those documents over to 10 your attorney?</p> <p>11 A. Yes, they did.</p> <p>12 Q. Can I direct your attention to request No. 5, 13 which is on the second to last page. Do you know how 14 many documents you turned over that were responsive to 15 that request?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Who in your staff conducted the search for these 18 documents?</p> <p>19 A. I think that Ms. Fagan did.</p> <p>20 Q. Do you know if she searched electronic documents 21 as well as hard copies of documents?</p> <p>22 A. I assume that she did and followed the 23 instructions in the subpoena.</p> <p>24 Q. Did you have any communications with her about 25 her search for documents?</p>



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<p>1 A. Other than when the subpoena came in, she called 2 and said we were notified by subpoena. Of course, we 3 get those kind of requests all the time. Typically, she 4 will do those. And I said, "Well, go ahead and comply 5 with it and turn it over to the Attorney General's 6 office." It was more or less routine in our office to 7 do that sort of thing. 8 Q. It's routine because of public information 9 request? 10 A. Sure. Yeah. 11 Q. Did you have any files compiled already that you 12 had done for public request on this issue? 13 A. No, I don't think so. 14 Q. Are you familiar with Section 5 of the Voting 15 Rights Act? 16 A. Not -- I know it exists. I'm not an expert on 17 it. 18 Q. What's your understanding of the requirements 19 under Section 5? 20 A. Well, you know, I'm not -- I don't really want to 21 go into what my understanding of it is. I think that 22 is, Section 5 of the Voting Rights Act, I believe is the 23 requirement for preclearance; is that correct? Is this 24 a test? 25 Q. No. I'm not trying to test you, sir. I'm really</p>	<p>37 1 to Section 5? 2 MR. SWEETEN: Again, if you will confine 3 your answers to matters of the public record. Do not 4 reveal your thoughts, mental impressions or motivations 5 about this. 6 A. The committees in the Texas Senate hold hearings. 7 Those hearings are recorded and the documents that are 8 presented to be included in the record are included in 9 the record. And that would be the public record. The 10 Senate debates are the same way, as far as we don't use 11 exhibits on the Senate floor. But the debates and the 12 amendments to bills are in the public record. 13 Q. And again, based on the public record, does the 14 legislature usually do some sort of factual analysis to 15 determine if a law is going to have a retrogressive 16 effect on minorities? 17 MR. SWEETEN: Objection; compound. 18 Objection. Don't answer if it requires you to reveal 19 your mental impressions, opinions, motivation about 20 legislation. You can refer to matters of the public 21 record. But if in referring to the public record you 22 would be revealing your mental impressions do not do so. 23 It's subject to privilege. 24 BY MS. MARANZANO: 25 Q. And just to be clear, this isn't really -- I'm</p>
<p>38 1 not. 2 MR. BRAZIL: You'll be graded later. 3 A. Thank you. What I'm trying to figure out is what 4 are you asking, I guess. It's not clear to me. 5 Q. (By Ms. Maranzano) Right. Well, let me ask you 6 a different question. Are you familiar with a 7 requirement under the Voting Rights Act by which Texas 8 has to submit election related changes to either the 9 Department of Justice or federal court to get 10 preclearance? 11 A. I am familiar that we are required to do that. 12 Q. Okay. Could you describe as a general matter any 13 steps of the legislature takes to increase the chances 14 that a law is going to be precleared by the Department 15 of Justice or a federal court? 16 MR. SWEETEN: I'm going to instruct you not 17 to answer on the basis of legislative privilege. The 18 question would require you to reveal your thoughts, 19 mental impression and motivation about legislation in 20 furtherance of the legislative process. So I'm going to 21 instruct you not to answer on that basis. 22 BY MS. MARANZANO: 23 Q. All right. Let me ask you this, Senator. Is 24 there anything based on the public record that you could 25 tell me about the steps the legislature takes in regards</p>	<p>40 1 not asking about what you personally do. I'm asking 2 about steps the legislature takes, available in the 3 public record, in terms of a factual analysis about 4 election related changes and whether or not they have a 5 retrogressive effect? 6 MR. SWEETEN: Same instruction. 7 A. I think the public record reflects what we do 8 very clearly and we follow, you know, the -- in the 9 committees we have hearings, we have public hearings. 10 And the testimony that we receive; pros and cons, 11 analytical, not so analytical, is in the public record. 12 Q. And just in terms of a "yes" or "no" answer for 13 this one. Do you do anything beyond that testimony. Do 14 you do any analysis beyond that testimony? 15 MR. SWEETEN: Don't answer that question. 16 That would require you -- 17 MS. MARANZANO: Not even to say "yes" or 18 "no"? 19 MR. SWEETEN: No, not even a "yes" or "no." 20 You're asking him about his mental impression, 21 motivation. Whether he does something beyond the public 22 record would go into that and he's not going to provide 23 it based upon the legislative privilege objection. 24 MS. MARANZANO: Okay. This isn't about him. 25 This is about steps the legislature takes. So it's not</p>



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<p>41</p> <p>1 his mental impressions. And I'm not trying to probe 2 what it is, I'm just asking for a "yes" or "no." 3 MR. SWEETEN: And, you know, respectfully, 4 my response is that if you're asking him things beyond 5 the public record, if things are done, then you would 6 potentially be asking him to reveal communications he's 7 had with other senators, with legislative staff, with 8 State agencies, Texas legislative council constituents, 9 you would be asking for his mental impressions and 10 thought process. So with respect to that, I'm going to 11 instruct him not to answer that question as posed. 12 BY MS. MARANZANO: 13 Q. You're following your counsel's instructions, 14 just for the record? 15 A. Yes, ma'am. 16 Q. Thank you. Based on the public record, are there 17 any steps that the legislature takes to build a record 18 that supports an assertion that there's no 19 discriminatory purpose behind the bill? Based on the 20 public record. 21 MR. SWEETEN: First of all, I think he's 22 answered based on the public record. I think he's 23 answered this question. Secondly, you're now asking him 24 about his process as reflected in the public record. 25 And in that regard, you're seeking to find out his</p>	<p>43</p> <p>1 Q. Yes. So this time I'm asking you about, based on 2 the public record, does the legislature take steps to 3 build a record that would support an assertion that 4 there's no discriminatory purpose behind an act? 5 MR. SWEETEN: Okay. You're asking him, does 6 the legislature build a record to support facts and 7 based upon the public record. In doing that, you're 8 asking for more than what's on the public record. 9 You're asking for, are they taking steps to build a 10 record. 11 MS. MARANZANO: On the record. 12 MR. SWEETEN: He's not going to talk about 13 his process on what steps they take, the purpose of 14 those steps. He's not going to answer that question. 15 You can ask him, you know, as to what's on the public 16 record. But you're not going to get into his thoughts 17 and mental impressions. There's a line there and these 18 last few questions you're getting into his mental 19 impressions and I'm not going to let him do that. That 20 is subject to privilege. 21 MS. MARANZANO: Okay. I am actually -- I am 22 really not trying to get into his mental impressions. 23 I'm trying to ask him about the steps taken on the 24 record. And we went through the effect and now I'm 25 asking about steps taken on the record that go to the</p>
<p>42</p> <p>1 mental impressions, opinions and his motivations about 2 legislation. So he's referred to the public record. He 3 can do that, but he's not going to get into what his 4 thinking is about how something complies with the Voting 5 Rights Act. That is absolutely subject to the 6 privilege. 7 BY MS. MARANZANO: 8 Q. Okay. Well, let me try it this way. We spoke 9 about the public record in regard to the retrogressive 10 effect. And you said people testify at hearings and 11 they're all transcribed or recorded, I think you said. 12 And now I'm just asking about, is there anything 13 additional that happens on the public record that goes 14 to building a record to support an assertion that 15 there's no discriminatory purpose? 16 A. First, I don't recall you ever asking me about 17 specifically the retrogressive effect. So I'm not sure 18 I understand your question. So if you could -- the 19 foundation was fairly lengthy. If you could just -- 20 Q. Yes. I'm sorry. I thought my last question had 21 been about the effect. That was when you said to me 22 that there were hearings, the hearings were recorded 23 people testified. 24 A. Well, I just didn't hear the word retrogression 25 effect.</p>	<p>44</p> <p>1 purpose of the legislature. What sort of steps does the 2 legislature take on the public record that support an 3 assertion that there's no discriminatory purpose behind 4 the bill. 5 MR. SWEETEN: Again, you're asking for his 6 motivations in that question. He can testify about what 7 is on the record. He's not going to testify about steps 8 taken to build a record. And to answer that question. 9 So you're treading into what is subject to the 10 legislative privilege and I'm going to instruct him not 11 to answer. 12 BY MS. MARANZANO: 13 Q. When you talked about the committee proceedings, 14 are there any procedures, public procedures established 15 by the committee that relate to Section 5 of the Voting 16 Rights Act? 17 MR. SWEETEN: You can testify about matter 18 on the public record. 19 A. I don't know if there are any specific rules or 20 requirements with regard to any specific law of how we 21 would handle anything. 22 Q. (By Ms. Maranzano) Senator, What is Texas' 23 current system for verifying a voter's identity? 24 MR. SWEETEN: You can answer. 25 A. Well, in the statute. I think you have -- there</p>



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<p>45</p> <p>1 is -- I think you present a voter registration card as 2 one. If you don't have the card, you can present other 3 forms of ID. I think generally that's it. I mean, if 4 you can show me the statute I can tell you specifically. 5 Q. If a voter doesn't have a voter registration 6 card, are you familiar with the forms of ID that the 7 voter would need to show? 8 A. I believe it's a driver's license or -- there are 9 other alternative forms of ID as well. 10 Q. Are there some non-photo IDs that a voter can 11 show? 12 A. I believe that's correct. Under the current law 13 before Senate Bill 14. 14 Q. Exactly, yes. Do you know if a utility bill is 15 one of those forms of identification? 16 A. Whatever the statute says is what it says. 17 Q. And if the voter doesn't have any of those forms 18 of identification, can a voter cast a provisional 19 ballot? 20 A. I think that's correct. 21 Q. And do you know the standards by which that 22 provisional ballot may or may not be counted? 23 MR. SWEETEN: Hold on a second. You're 24 asking about existing law. I'm going to let him answer 25 that to the extent he knows.</p>	<p>47</p> <p>1 testimony. I recall whatever is in the record, is in 2 the record is all I can say. I didn't look at the whole 3 record. It's a long record. And so I would be going 4 solely off of memory. And I'm not comfortable doing 5 that. 6 Q. So right now as you sit here, you're not aware of 7 problems that were testified to on the public record 8 with the current system of verifying a voter's identity? 9 A. That's not what I said. I just said I'm not 10 prepared to go into specific instances. It is in the 11 record. Whatever is in the record, is in the record. 12 Q. Okay. But right now -- but I'm just asking you 13 what you know right now, sitting here today, and you're 14 not prepared to testify about any? 15 A. Right now I know there was. But I can't recall 16 the specific instances to the degree of certainty that I 17 would be comfortable testifying under oath about. 18 Q. Okay. You recall there were problems that were 19 testified to? 20 A. Yes. I think there were. But you would have to 21 go to the record to see what they were. 22 Q. Well, what do you remember about the record? 23 A. I don't. 24 Q. You don't? So you can't tell me anything about 25 those problems?</p>
<p>46</p> <p>1 MS. MARANZANO: Thank you. 2 A. I will be -- you know, I'm like most lawyers I 3 would have to go to the statute and look. I'm not going 4 to guess on what it says specifically. 5 Q. (By Ms. Maranzano) Okay. Is it your 6 understanding that a voter does not need to take an 7 additional trip anywhere to in -- and show the registrar 8 one of the -- this is current law, one of the forms of 9 ID under current law in order for that provisional 10 ballot the be counted? 11 A. I would have to look at the statute. And I 12 didn't look at the statute to prepare. 13 Q. Okay. Is the current system for verifying a 14 voter's identity inadequate? 15 MR. SWEETEN: Objection. It calls for 16 matters of legislative privilege. Don't answer the 17 question. 18 BY MS. MARANZANO: 19 Q. Let me ask you this. Did anything come up on the 20 public record that reflects problems with the current 21 system for verifying a voter's identity? 22 MR. SWEETEN: You can answer the question as 23 phrased. 24 A. You would have to look at the public record. I 25 think -- you know, I don't recall specific anecdotal</p>	<p>48</p> <p>1 A. I can tell you this -- and, you know, there were 2 issues. But I'm not prepared go into specific anecdotal 3 situations. The record reflects that. And the record 4 will have to speak for that. 5 Q. Can you tell me when you first heard support for 6 enacting a photo identification law in Texas? 7 MR. SWEETEN: You can answer to the extent 8 it doesn't reveal matters of legislative privilege. 9 A. I can't remember specifically. 10 Q. (By Ms. Maranzano) Can you tell me 11 approximately? 12 A. No. 13 Q. Do you remember what the first voter 14 identification law that you worked on was? 15 A. I don't remember the specific bill. I know -- 16 and I didn't work on them. I was never a sponsor of any 17 of these bills. They would either, when I took over as 18 State Affairs chairman that's the jurisdiction, voter 19 election laws are in that jurisdiction with a lot of 20 other things. And so I think there was an interim study 21 on that. I think there was -- there were bills that 22 were passed went through the committee after that. 23 Q. Okay. 24 MS. MARANZANO: Can we mark this? 25 (Exhibit No. 521 was marked.)</p>



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June 7, 2012

<p>49</p> <p>1 BY MS. MARANZANO:</p> <p>2 Q. Senator, I'm showing you what we're marking as</p> <p>3 deposition Exhibit 521. If you can take a look at it</p> <p>4 and tell me if it looks familiar to you?</p> <p>5 A. No.</p> <p>6 Q. No? Have you ever seen this bill before?</p> <p>7 A. I don't -- it's a House Bill. If it passed the</p> <p>8 House and came to the committee, I would assume I would.</p> <p>9 I don't know if it did pass the House.</p> <p>10 Q. Well, I'll represent to you that this bill did</p> <p>11 pass the House.</p> <p>12 A. Okay.</p> <p>13 Q. And it was referred to the State Affairs</p> <p>14 Committee.</p> <p>15 A. Okay.</p> <p>16 Q. Perhaps that refreshes your recollection</p> <p>17 slightly.</p> <p>18 A. Well, yes. If that's the case, then we would</p> <p>19 have heard this bill in the committee.</p> <p>20 Q. Do you recall if you did hear the bill?</p> <p>21 A. If you can tell me what year.</p> <p>22 Q. I'm sorry. This is from 2005.</p> <p>23 A. Okay. I assume we did hear the bill, but I don't</p> <p>24 know. You will have to look at the record.</p> <p>25 Q. Well, I will represent to you that this bill was</p>	<p>51</p> <p>1 object based on compound and vague. If you can answer</p> <p>2 it without revealing your thoughts and mental</p> <p>3 impressions or communications that you've had, then do</p> <p>4 so. But the you can't --</p> <p>5 A. The only thing I can do without -- without going</p> <p>6 into the legislative privilege is just generally in all</p> <p>7 committees: Number one, there's not support for the</p> <p>8 bill. Number two, it's not ready. It has flaws or</p> <p>9 technical flaws in it and you can't get any agreement to</p> <p>10 fix it. Number three, and sometimes this is number one,</p> <p>11 is that there's just not time. A bill doesn't get over</p> <p>12 to the Senate from the House until late in the session</p> <p>13 and there's just not time to take up the bill and hear</p> <p>14 it, especially if it is a bill that requires a lot of</p> <p>15 testimony. And there are just a lot of discretionary</p> <p>16 issues that are involved in generally -- in doing that.</p> <p>17 So that's basically -- that's a few of them. Sometimes</p> <p>18 they get tagged. They're procedural rules that members</p> <p>19 follow to prevent bills from getting heard that they</p> <p>20 don't want to have heard. So it's -- you know, a lot of</p> <p>21 different ways to -- and reasons why bills don't get</p> <p>22 hearings or why they don't -- they don't pass.</p> <p>23 Q. But what does it mean to have a bill tagged?</p> <p>24 A. In the rules require -- there's a 48 -- when the</p> <p>25 bill is in a committee, in a standing committee, it</p>
<p>50</p> <p>1 referred to and there was not a hearing on the bill. Do</p> <p>2 you have any recollection -- you can take a couple of</p> <p>3 minutes and maybe look it over and see if you have any</p> <p>4 recollection. You can see at the top it was introduced</p> <p>5 by -- it's House Bill -- for the record, it's House Bill</p> <p>6 1706.</p> <p>7 A. Okay. I do not know why the bill didn't get a</p> <p>8 hearing. That was seven years ago. There are a number</p> <p>9 of reasons why bills don't get hearings. So I couldn't</p> <p>10 tell you, nor do I know if the public record reflects</p> <p>11 why it didn't get a hearing. I don't know.</p> <p>12 Q. What are some of the reasons that a bill doesn't</p> <p>13 get hearing?</p> <p>14 MR. SWEETEN: Yeah. Don't reveal your</p> <p>15 thoughts, mental impressions about legislation in</p> <p>16 answering the question. That's subject to the</p> <p>17 legislative privilege.</p> <p>18 BY MS. MARANZANO:</p> <p>19 Q. Are you able to provide an answer?</p> <p>20 A. Well, I'm not sure I understand the question.</p> <p>21 Q. You said there are several reasons a bill might</p> <p>22 not get a hearing, so I was asking you what are those</p> <p>23 reasons?</p> <p>24 MR. SWEETEN: Again, don't reveal your</p> <p>25 thoughts or mental impressions. I'm also going to</p>	<p>52</p> <p>1 requires -- a member can ask for a 48-hour hearing. And</p> <p>2 a 48-hour notice, which is typically twice the notice.</p> <p>3 So if it's -- you don't ever see that until the end of</p> <p>4 the session. And it -- you know, somebody will tag a</p> <p>5 bill and you'll run out of time to hear it.</p> <p>6 Q. I think the issue that you said before we talked</p> <p>7 about tagging was that there may just not be enough</p> <p>8 time. About how much time does a committee need to have</p> <p>9 a hearing and refer the bill to the floor?</p> <p>10 A. Depends on the bill.</p> <p>11 Q. Do you know about how much time a bill like</p> <p>12 HB 1706 would need?</p> <p>13 MR. SWEETEN: Objection. I think the</p> <p>14 question is vague. Also you -- don't reveal matters of</p> <p>15 legislative privilege about a specific bill. You can</p> <p>16 answer about general procedures as long as they're</p> <p>17 matters in public record, but don't reveal your mental</p> <p>18 impressions in answer.</p> <p>19 A. Would you repeat the question?</p> <p>20 Q. (By Ms. Maranzano) About how much time would a</p> <p>21 bill, such as HB 1706 or another voter ID bill, need to</p> <p>22 get heard in committee and then referred out?</p> <p>23 MR. SWEETEN: Same objection. Instruction.</p> <p>24 A. I can't answer that specifically. There is no</p> <p>25 formula for how much time it takes. It just depends on</p>



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<p>1 the bill.</p> <p>2 Q. (By Ms. Maranzano) Okay. And can you just give</p> <p>3 me a sense of -- just a sense of what you mean by that?</p> <p>4 What about the bill informs how much time you need?</p> <p>5 MR. SWEETEN: Let's -- I'm going to object</p> <p>6 based upon compound, vague. Also don't reveal any</p> <p>7 thoughts, mental impressions or communications about any</p> <p>8 specific bill, legislative act in answering the</p> <p>9 question.</p> <p>10 A. Logistically, depends on how many witnesses you</p> <p>11 have, depends on the availability of members to be</p> <p>12 there. It depends on the length of the bill. A number</p> <p>13 of logistical objective things like that.</p> <p>14 Q. (By Ms. Maranzano) Okay. And one of the other</p> <p>15 issues you mentioned that sometimes prevents a bill from</p> <p>16 getting a hearing in committee is there might not be</p> <p>17 support for the bill. Were you referring to support in</p> <p>18 the committee or support in the Senate?</p> <p>19 MR. SWEETEN: And this is as a general</p> <p>20 matter.</p> <p>21 BY MS. MARANZANO:</p> <p>22 Q. As a general matter.</p> <p>23 A. A general matter, either way.</p> <p>24 Q. How do you usually know if a bill has support?</p> <p>25 MR. SWEETEN: You can answer as a general</p>	<p>53</p> <p>1 Q. And is there both photo ID and non-photo ID</p> <p>2 listed there?</p> <p>3 A. It looks like they all require that, but I may be</p> <p>4 wrong.</p> <p>5 Q. I'm sorry. It looks like they all require what?</p> <p>6 A. A photo identification.</p> <p>7 Q. Well, do you see that on Page 5 towards the</p> <p>8 bottom it says there's a Section B?</p> <p>9 A. Oh, there's an alternative, yeah. Utility bill,</p> <p>10 which is current law, official mail address.</p> <p>11 Q. So would you agree that it allows for both photo</p> <p>12 an non-photo ID?</p> <p>13 MR. SWEETEN: You can answer based on the</p> <p>14 text of the bill.</p> <p>15 A. I think that's what it says.</p> <p>16 Q. (By Ms. Maranzano) Did you have any</p> <p>17 communications about HB 1706, that you can recall?</p> <p>18 A. No, I don't recall any. I'm not saying I didn't.</p> <p>19 I just -- it's been a long time ago.</p> <p>20 Q. Right. I understand. Are you aware of the</p> <p>21 source of the legislative language for HB 1706?</p> <p>22 A. No, ma'am.</p> <p>23 Q. Do you know if your staff had any involvement in</p> <p>24 the development of HB 1706?</p> <p>25 A. I'm going to say probably not. It's a House</p>
<p>54</p> <p>1 matter.</p> <p>2 A. You don't, unless -- you may hear or know or what</p> <p>3 you may have a sense as a chairman in your judgment.</p> <p>4 Q. (By Ms. Maranzano) Do you make the determination</p> <p>5 of whether a bill has a hearing or not?</p> <p>6 MR. SWEETEN: Objection to the question as</p> <p>7 compound. And don't reveal matters subject to the</p> <p>8 legislative privilege including your mental impressions,</p> <p>9 thoughts and opinions. You can answer as a general</p> <p>10 matter of procedure, if you can. But don't reveal</p> <p>11 privilege.</p> <p>12 A. As a general matter, chairmen determine what</p> <p>13 bills are heard and when they're heard.</p> <p>14 Q. (By Ms. Maranzano) Can you direct your attention</p> <p>15 to Section 7 of HB 1706, and just take a quick look at</p> <p>16 that.</p> <p>17 A. What page is that on?</p> <p>18 Q. I'm sorry. Page 4 and I goes on to Page 5. And</p> <p>19 it looks like it also goes on to Page 6. And actually</p> <p>20 the top of 7?</p> <p>21 A. Okay.</p> <p>22 Q. Do you see that -- well, do you see that this</p> <p>23 legislation provides for a number of different forms of</p> <p>24 identification to be used?</p> <p>25 A. It appears to have a number of different options.</p>	<p>56</p> <p>1 Bill. And so we wouldn't have been involved with that.</p> <p>2 And I don't know who the Senate sponsor was.</p> <p>3 Q. Is it pretty unusual for Senate staff to be</p> <p>4 involved in developing a House Bill?</p> <p>5 MR. SWEETEN: You can answer as a general</p> <p>6 matter.</p> <p>7 A. As a general matter, yes. But there were times</p> <p>8 when we worked with House members to build an early</p> <p>9 consensus, if that's ever possible.</p> <p>10 Q. (By Ms. Maranzano) Did you take a public</p> <p>11 position on HB 1706?</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you know if there was any analysis done on</p> <p>14 HB 1706?</p> <p>15 MR. SWEETEN: Don't reveal matters of</p> <p>16 privilege. Objection; vague. Go ahead.</p> <p>17 A. The House may have done a bill analysis as they</p> <p>18 normally do and if it passed the House floor then --</p> <p>19 MR. SWEETEN: Yeah. I'm also going -- go</p> <p>20 ahead and finish.</p> <p>21 A. Oh, I'm sorry. I'm not aware that the Senate did</p> <p>22 anything.</p> <p>23 MR. SWEETEN: I'm going to object on the</p> <p>24 foundation as it calls for speculation.</p> <p>25 BY MS. MARANZANO:</p>



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<p>57</p> <p>1 Q. You're not aware that the Senate did any analysis 2 on House Bill 1706? 3 A. I don't recall any. 4 Q. What was the purpose of 1706, if you know? 5 MR. SWEETEN: You can answer as to the 6 general purpose. Don't provide the subjective intent of 7 anyone if you know. 8 A. I'm going to start by saying this is a House 9 Bill. And it was generated by the House members. It's 10 not a Senate Bill. So I'm not going to speculate on 11 what their purpose was. The general purpose of the 12 voter ID bill was to assure voter integrity or voting 13 integrity. And that's the primary general purpose of 14 all these types of bills. It's the general purpose of 15 what we do with a lot of the election bills. HAVA, even 16 MOVE was designed to help military voters. So that's 17 the general purpose. 18 Q. (By Ms. Maranzano) And based on the public 19 record, do you think that this would have accomplished 20 that goal? 21 MR. SWEETEN: No. Don't answer the 22 question. She's asking for your mental impressions and 23 thoughts about whether this bill accomplishes a certain 24 goal. So don't answer the question as phrased. It's 25 legislative privilege.</p>	<p>59</p> <p>1 MR. SWEETEN: Yeah. Don't answer the 2 question to the extent it would reveal thoughts, mental 3 impressions, opinions, motivation about legislation or 4 any communication you've had with legislators, staff, 5 State agencies, Texas ledge council. 6 A. If you'll refer to the record, the report was a 7 part of the interim charges that the Senate State 8 Affairs Committee was to take up. 9 Q. And do the interim charges come from the 10 governor? 11 A. No. 12 Q. Who do they come from? 13 A. Generally they come from the Lieutenant Governor 14 with, I think, input from other members of the Senate. 15 MR. SWEETEN: Are we at a point where we can 16 take a break in just a few minutes. 17 MS. MARANZANO: Yeah. 18 MR. SWEETEN: When you get to a logical 19 stopping point. 20 MS. MARANZANO: Yeah. Why don't we do it 21 now before we get into this too much. Thanks. 22 (Brief recess.) 23 BY MS. MARANZANO: 24 Q. So before the break we were taking a look at 25 interim report that the State Affairs Committee did.</p>
<p>58</p> <p>1 BY MS. MARANZANO: 2 Q. I assume you're not going to answer. Just for 3 the record, you're going to follow your counsel's 4 instruction not to answer that question? 5 A. Yes, ma'am. 6 Q. Do you recall a photo identification bill being 7 introduced in 2007? 8 A. No. 9 Q. Do you recall, in 2006, an interim report that 10 the State Affairs Committee did? 11 A. Yes, ma'am. 12 MS. MARANZANO: Can we have this marked? 13 (Exhibit No. 522 was marked.) 14 BY MS. MARANZANO: 15 Q. Can you take a look at that and let me know if 16 you recognize it? 17 A. I do. 18 Q. Is this a copy of the interim report that was 19 done in December of 2006? 20 A. Yes. It is. 21 Q. By the State Affairs Committee? 22 A. Yes, ma'am. 23 Q. What prompted this interim report? I mean, how 24 did it come about that the State Affairs Committee 25 issued this report?</p>	<p>60</p> <p>1 Can you take a look for me -- at the first page is a 2 letter that's written to you. And the signatures are on 3 the next page. It's from Senator Lucio and Senator 4 Ellis. Do you see that letter? 5 A. Yes, ma'am. 6 Q. You tell me, were there any members of the 7 committee other than Senator Lucio and Senator Ellis who 8 were minority members? 9 A. Who? 10 Q. Who were on the committee when this report was 11 issued. 12 A. The names of the committee members are on the 13 first page on the letterhead. And then I think all 14 members signed the report. 15 Q. And were any, other than Senator Ellis and 16 Senator Lucio, racial or ethnic minorities? 17 A. Not according to this list. Well, Frank Madla 18 was a member, but I think he -- I'm not sure why he 19 wasn't on the list. Maybe he had stopped serving or 20 maybe that was an old letterhead that shouldn't have 21 been used. But I can't -- it shows that he is on the 22 committee. And I recall that he was on the committee 23 for a while. 24 Q. His name was? 25 A. Frank Madla.</p>



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<p>61</p> <p>1 Q. And what race or ethnicity is he?</p> <p>2 A. Hispanic. He may have gone off and -- he may</p> <p>3 have been -- I think that he lost his reelection and</p> <p>4 that may have been why he didn't -- the report was done</p> <p>5 after January 1st so that may have been why he wasn't on</p> <p>6 it.</p> <p>7 Q. I see. Okay. What was the purpose of this</p> <p>8 report?</p> <p>9 A. General purpose was to as stated in the charge.</p> <p>10 MR. SWEETEN: You can refer to matters of</p> <p>11 public record. I don't want you to give -- you don't</p> <p>12 have to give the general -- you've answered the</p> <p>13 question.</p> <p>14 A. The general purpose as stated in the charge.</p> <p>15 Q. (By Ms. Maranzano) Can you tell me what that is?</p> <p>16 A. Well, the record reflects that -- I don't think</p> <p>17 you provided the whole report.</p> <p>18 Q. I'm sorry. I didn't.</p> <p>19 A. The entire report the charge in it.</p> <p>20 Q. Okay. And I should have said that earlier. This</p> <p>21 is actually an excerpt from the report. Well, what's</p> <p>22 your understanding, as you sit here today, as to what</p> <p>23 the purpose was?</p> <p>24 MR. SWEETEN: Again, you can refer to</p> <p>25 matters of public record.</p>	<p>63</p> <p>1 matters of the public record. Don't reveal matters of</p> <p>2 privilege including conversations you've had with anyone</p> <p>3 or your own thoughts or mental impressions.</p> <p>4 A. The report, which was prepared in 2006, reflects</p> <p>5 the committee's carrying out the charge. Number,</p> <p>6 whatever it is, 13, I believe. Whatever the charge</p> <p>7 is -- it's charge No. 3.</p> <p>8 Q. (By Ms. Maranzano) Can you just turn back to the</p> <p>9 letter for a second. It says -- there's a sentence in</p> <p>10 the second paragraph that says, "The committee makes no</p> <p>11 recommendations regarding policy issues in favor or in</p> <p>12 opposition to voter identification or ballot</p> <p>13 authenticity."</p> <p>14 A. Where is this? I'm sorry.</p> <p>15 Q. It's in that letter that we were looking at.</p> <p>16 It's in the second -- yeah, that one.</p> <p>17 A. The one from Senator Ellis.</p> <p>18 Q. From Senator Ellis and Lucio. And it's in that</p> <p>19 second paragraph and it's a phrase of the second</p> <p>20 sentence.</p> <p>21 MR. SWEETEN: It's right there.</p> <p>22 A. Okay.</p> <p>23 Q. (By Ms. Maranzano) Does that refresh your</p> <p>24 recollection as to whether a recommendation was made</p> <p>25 about voter identification and ballot authenticity?</p>
<p>62</p> <p>1 A. Purpose of what?</p> <p>2 Q. (By Ms. Maranzano) Of this report.</p> <p>3 A. The -- that you have before me?</p> <p>4 Q. Let me narrow it, because what I'm interested in</p> <p>5 is the section of the report that says here, which looks</p> <p>6 like there were several different issues you looked at.</p> <p>7 And this was related to charge No. 3. And I think that</p> <p>8 this might be the charge that you're referring to under</p> <p>9 charge No. 3 on Page 13?</p> <p>10 MR. SWEETEN: Again, you can refer to</p> <p>11 matters in the public record in answering the question.</p> <p>12 Don't reveal matters that are subject to the privilege.</p> <p>13 A. The charge No. 3 is -- is the purpose for</p> <p>14 writing -- general purpose for writing a report. And</p> <p>15 the record here reflects the instructions provided in</p> <p>16 the charge.</p> <p>17 Q. (By Ms. Maranzano) Do you see that first</p> <p>18 sentence under charge No. 3 says, "Study and make</p> <p>19 recommendations on how election of firms could verify</p> <p>20 the identity of a voter without hindering a person's</p> <p>21 right to vote?"</p> <p>22 A. I do.</p> <p>23 Q. Did the committee come up with a recommendation</p> <p>24 on that?</p> <p>25 MR. SWEETEN: Again, you can refer to</p>	<p>64</p> <p>1 MR. SWEETEN: You can reveal matters of the</p> <p>2 public record.</p> <p>3 A. It reflects what Senator Ellis said and Senator</p> <p>4 Lucio.</p> <p>5 Q. (By Ms. Maranzano) Do you have a different</p> <p>6 recollection?</p> <p>7 A. No.</p> <p>8 MR. SWEETEN: Wait a minute. Can you</p> <p>9 rephrase the question? Do you have a different</p> <p>10 recollection of what?</p> <p>11 MS. MARANZANO: Well, he said --</p> <p>12 MR. SWEETEN: That it says this?</p> <p>13 MS. MARANZANO: He said this reflects what</p> <p>14 Senator Ellis and Senator Lucio said. I'm sorry.</p> <p>15 BY MS. MARANZANO:</p> <p>16 Q. Do you have a different recollection of what</p> <p>17 occurred?</p> <p>18 MR. SWEETEN: You can refer to matters of</p> <p>19 the public record. Don't reveal matters of privilege.</p> <p>20 MS. MARANZANO: I believe this should all be</p> <p>21 a public record question.</p> <p>22 MR. SWEETEN: Are you asking him -- I don't</p> <p>23 understand what you're asking him. Are you asking him</p> <p>24 does it say what it says. Are you asking him did he</p> <p>25 write the letter.</p>



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<p>1 MS. MARANZANO: No. I'm asking did the 2 committee make a recommendation regarding voter 3 identification. 4 MR. SWEETEN: You can refer to matters of 5 public record. 6 A. I think you just have to read the report and 7 determine that. And the report speaks for itself. 8 Q. (By Ms. Maranzano) All right. But I'm just 9 asking you, specifically I'm just wanting to find out 10 your knowledge. And so as you sit here today, do you 11 have a recollection as to whether there was a 12 recommendation made? 13 MR. SWEETEN: You can answer. 14 A. The report reflects. 15 MR. SWEETEN: Go ahead. Sorry. 16 A. The report reflects what we did seven years ago. 17 Q. (By Ms. Maranzano) Okay. And did you -- did the 18 committee thoroughly study this issue prior to making 19 the report based on the public record? 20 MR. SWEETEN: Yeah. Don't answer the 21 question as asked. The question directly asks your 22 thought processes. I mean, the term "thoroughly" asks 23 for your mental impressions, opinions, motivation about 24 legislation. Could implicate discussions. Don't answer 25 as phrased.</p>	<p>65 1 Q. Yes. Exactly. Same paragraph -- second 2 paragraph. But this one is towards the bottom. The 3 sentence starts with, "However, Georgia Secretary of 4 State, Cathy Cox, recently completed a demographic 5 analysis revealing that between a quarter and a third of 6 senior and African-American voters lacked State photo 7 identification, thus disenfranchising them from the 8 election process." Do you know if that was a study that 9 was looked at by the State Affairs Committee in the 10 public record prior to issuing this report? 11 A. No, I do not know. 12 Q. And can you look at the last paragraph on that 13 page? There's a sentence that says, "It is our shared 14 belief that anti-fraud measures adopted by the federal 15 Help America Vote Act sufficiently deter voter fraud and 16 that additional photo identification measures are 17 unnecessary." Did the committee, based on the public 18 record, analyze whether the identification under the 19 Help America Vote Act would sufficiently deter voter 20 fraud? 21 MR. SWEETEN: Yeah. Don't answer the 22 question to the extent it requires you to reveal your 23 mental thoughts, impressions, analysis, motivation about 24 legislation. You can refer to matters of the public 25 record in answering it, but other than that don't answer</p>
<p>66 1 BY MS. MARANZANO: 2 Q. Okay. Let me ask it this way. 3 MR. SWEETEN: Legislative privilege. 4 BY MS. MARANZANO: 5 Q. What did the committee do in order to issue this 6 report? 7 MR. SWEETEN: You can refer to matters of 8 the public record. Don't reveal your processes, mental 9 impressions, opinions, motivations about legislation. 10 A. I believe the report is fairly clear and specific 11 what we did. 12 Q. (By Ms. Maranzano) And as you sit here today, 13 can you add any testimony to that? 14 MR. SWEETEN: Don't reveal matters of 15 privilege. You can refer to matter of the public 16 record. But your thoughts and mental impressions are 17 your own and are subject to the legislative privilege. 18 A. I wouldn't be able to elaborate further than 19 what's in the report. 20 Q. (By Ms. Maranzano) Okay. Can you, in that same 21 paragraph that we were talking about in the letter, do 22 you see there's a sentence that says, "However, 23 Georgia"? 24 A. Let's -- when you say "letter," you're referring 25 to Senator Ellis's letter.</p>	<p>68 1 it. 2 A. I don't recall other than what's in the report. 3 Q. (By Ms. Maranzano) Can you look at Page 25 and 4 26 in the report for me? On Page 25, do you see a chart 5 that talks about voter fraud investigation from 2006? 6 A. Yes. 7 Q. And the fourth one down says, "unspecified 8 allegations." Can you tell me what that means? 9 MR. SWEETEN: You can refer to matters of 10 the public record. Don't reveal your thoughts or mental 11 impressions in answering the question. 12 A. I don't recall. 13 Q. (By Ms. Maranzano) A few down below that there's 14 one that says, "unlawfully accepting a voter and 15 illegally voting." Can you tell me what that means? 16 MR. SWEETEN: Same instruction. 17 A. No. I would have to -- I don't recall what that 18 is. 19 Q. (By Ms. Maranzano) And a few below that, 20 "illegal ballot handling," do you recall what that 21 means? 22 MR. SWEETEN: Same thing. You can refer to 23 matters of the public record. Don't reveal your mental 24 thoughts and impressions about that, other than what's 25 on the public record.</p>



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<p>69</p> <p>1 A. I don't recall specifically what that refers to.</p> <p>2 Q. (By Ms. Maranzano) Do you see on -- that</p> <p>3 chart -- am I correct, that chart is labeled "voter</p> <p>4 fraud investigations"?</p> <p>5 A. Yes.</p> <p>6 Q. And on the next page there's a chart that's</p> <p>7 listed "voter fraud convictions"?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see in that paragraph below it says,</p> <p>10 "Although there have been three instances of alleged</p> <p>11 illegal voting which may include circumstances prevented</p> <p>12 by voter photo ID, only one of these has been fully</p> <p>13 investigated and referred for criminal prosecution." Do</p> <p>14 you know if that case that's referred to there, that was</p> <p>15 referred for prosecution, resulted in a conviction?</p> <p>16 MR. SWEETEN: Yeah. Don't answer the</p> <p>17 question except for to the extent it's a matter of</p> <p>18 public record.</p> <p>19 A. I don't know.</p> <p>20 Q. (By Ms. Maranzano) Do you remember any details</p> <p>21 about that case, based on the public record?</p> <p>22 A. No.</p> <p>23 Q. Do you remember any details about the other cases</p> <p>24 that may have been prevented by a voter photo ID based</p> <p>25 on the public record?</p>	<p>71</p> <p>1 Q. Okay. No, I've got you. How about I ask it like</p> <p>2 this. In the 2007 legislative session, were there bills</p> <p>3 introduced related to the vote by mail process?</p> <p>4 A. Number one, I didn't introduce any bills.</p> <p>5 Q. Okay.</p> <p>6 A. Number two, there may be bills -- the members</p> <p>7 introduce about 5,000 bills a session. So there may</p> <p>8 have been bills. I'm not familiar with them,</p> <p>9 specifically.</p> <p>10 Q. Do you recall having any hearings on any bills</p> <p>11 about the vote by mail process in the State Affairs</p> <p>12 Committee?</p> <p>13 MR. SWEETEN: You can answer.</p> <p>14 BY MS. MARANZANO:</p> <p>15 Q. In the 2007 legislative session?</p> <p>16 A. As we sit here today, no. If you show me a</p> <p>17 record, I might refresh my recollection. But if we had,</p> <p>18 in that committee, several hundred bills and I'm not</p> <p>19 sure -- when you start talking dates I just can't -- a</p> <p>20 lot of water has been under the bridge since 2007 so I</p> <p>21 can't give you a specific answer.</p> <p>22 Q. How about do you remember any bills related to</p> <p>23 vote by mail on which the State Affairs Committee heard</p> <p>24 testimony in either the 2009 or 2011 legislative</p> <p>25 sessions?</p>
<p>70</p> <p>1 MR. SWEETEN: Same objection; legislative</p> <p>2 privilege, but you can answer to the extent you can</p> <p>3 refer to public record.</p> <p>4 A. I don't know.</p> <p>5 Q. (By Ms. Maranzano) After this report was issued,</p> <p>6 were there any bills introduced to prevent voter fraud</p> <p>7 in the vote by mail process, based on the public record</p> <p>8 that was introduced?</p> <p>9 MR. SWEETEN: Well, you're asking -- no.</p> <p>10 You're asking were there bills --</p> <p>11 MS. MARANZANO: After the report. Not</p> <p>12 related to the report.</p> <p>13 MR. SWEETEN: If you want to ask him if</p> <p>14 there were bills related to photo identification, I'll</p> <p>15 let him answer the question. You're asking him to</p> <p>16 address a problem, is what you've put in -- and I think</p> <p>17 this that's intruding into legislative purpose. In</p> <p>18 other words, you're asking as result of this, what is</p> <p>19 the effect to introduce X. He's not going to answer it</p> <p>20 as phrased. I will let him answer if chronologically an</p> <p>21 additional photo ID bill was introduced, matters of the</p> <p>22 public record, he can refer to. But he's not going to</p> <p>23 reveal his thoughts and mental impressions, as subtle as</p> <p>24 you want to be, he's not going to do that.</p> <p>25 BY MS. MARANZANO:</p>	<p>72</p> <p>1 MR. SWEETEN: You can answer as phrased.</p> <p>2 A. All of these years run together and so I can't</p> <p>3 give you a specific time frame of when we heard bills,</p> <p>4 unless you show me the bill.</p> <p>5 Q. (By Ms. Maranzano) Okay. But sitting here</p> <p>6 today, and I'm not trying to ask you which session it</p> <p>7 was introduced, but do you have a recollection of</p> <p>8 hearings in the State Affairs Committee on vote by mail</p> <p>9 bills?</p> <p>10 A. I think we did. But, you know, again, we hear a</p> <p>11 lot of bills. And so I believe we did have some</p> <p>12 legislation in regard to vote by mail. I'm not sure if</p> <p>13 I sponsored it, it was part of an omnibus bill or what.</p> <p>14 But I can't recall, specifically, the details around</p> <p>15 that.</p> <p>16 Q. Okay. Fair enough. Can you look at the page</p> <p>17 that says Page 28 at the bottom. And there's a</p> <p>18 subheading that says "conclusion." Under the second</p> <p>19 paragraph in that section, there's a sentence that</p> <p>20 starts with 200. It says, "244 of Texas' 254 counties,</p> <p>21 96 percent have at last one office." If you look at the</p> <p>22 sentence before, I think it's referring to driver's</p> <p>23 license offices. Would you agree with that?</p> <p>24 A. I'm not finding it.</p> <p>25 Q. I'm sorry?</p>



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<p>73</p> <p>1 A. Let me find it. Oh, it's in the second 2 paragraph. Yeah, I see. 3 Q. Do you see the sentence now, 200? 4 A. Yes, ma'am. 5 Q. And that's referring to driver's license offices? 6 A. That's what it says. 7 Q. Do you know how many counties currently have 8 driver's license offices in Texas? 9 A. I couldn't tell you. 10 Q. Based on the public record of what occurred in 11 the committee, did the committee determine that the 12 number of driver's license offices in the state was a 13 component that needed to be looked at when analyzing 14 voter ID legislation? 15 MR. SWEETEN: Don't answer it. It requests 16 information that would be subject to the legislative 17 privilege. You can refer to the record for factual 18 matters, but don't reveal your processes or analysis. 19 A. The report speaks for itself on that issue. 20 Q. (By Ms. Maranzano) And can you look at the 21 paragraph below that. And the sentence that says, 22 "Opponents of voter ID legislation requiring a photo ID 23 for foreign and elderly voters. However, as the lack of 24 reports on voter fraud, there are no studies to believe 25 status to support this claim." Based on the public</p>	<p>75</p> <p>1 Q. When you're having an interim -- when you're 2 creating an interim report like this one, do you have 3 public testimony in front of the State Affairs Committee 4 as with -- as you testified happened on other matters in 5 front of the State Affairs Committee? 6 A. On most issues, yes. 7 Q. Do you recall if that occurred with this report? 8 A. No. You know, it may -- the public record would 9 have to reveal that. 10 Q. Can you look at the last sentence in that 11 paragraph that we were just talking about which says, 12 "It is unknown whether the current level of voter fraud 13 will decrease, but a voter photo ID law will certainly 14 prevent some fraud. At the very least it would increase 15 voter confidence." Can you tell me if there were 16 discussions on the public record that would allow you 17 to -- were there discussions on the public record about 18 those statements? 19 A. You would have to look at the public record. 20 Q. You have no independent recollection? 21 A. I don't. 22 Q. Can you look at the next page for me. There's a 23 subheading that says "recommendations." Under 3 A, do 24 you see that second bullet? 25 A. I do.</p>
<p>74</p> <p>1 record, did the committee make any effort to look into 2 whether -- how many minority voters, minority registered 3 voters possessed forms of photo identification? 4 MR. SWEETEN: Don't answer the question as 5 phrased. It calls for matters of legislative privilege. 6 MS. MARANZANO: Mr. Sweeten, can he testify 7 at least as to whether this issue was discussed on the 8 public record? 9 MR. SWEETEN: I will allow him to answer 10 that question, was the issue discussed on the public 11 record, yes. Were any steps taken -- your previous 12 question was, were any steps taken to do an analysis is 13 not appropriate. But, yeah, he can answer that 14 question. 15 BY MS. MARANZANO: 16 Q. Okay. Let me ask you, were any discussions of 17 that taken -- held on the public record? 18 A. You'll have to look at the public record. I 19 don't -- that's seven years ago and, you know, I can't 20 remember anything specifically -- or can't remember what 21 specific debates or conversations. Again you've got -- 22 we do a lot of legislation. And it's not -- that's a 23 long time ago. The report, in the record of the report, 24 would be the best evidence of what we considered and 25 what the committee conclusions were.</p>	<p>76</p> <p>1 Q. It says, "Issuance of qualifying photo IDs free 2 of charge to any voter requesting, regardless of 3 personal income." Can you tell me what was the purpose 4 of including that language? 5 MR. SWEETEN: Don't answer the question if 6 she's asking for your mental thoughts, processes, 7 analyses. 8 MS. MARANZANO: What about the purpose of 9 the committee, this legislative purpose? 10 MR. SWEETEN: If you're asking him what is 11 the purpose of the committee. 12 MS. MARANZANO: For making this 13 recommendation. 14 MR. SWEETEN: No, he's not going to answer 15 as to the specific recommendation set forth throughout 16 whatever these recommendations are. That would require 17 him to reveal matters of legislative privilege. He can 18 refer to the record itself. But he's not going to 19 answer based on his mental impressions, thoughts, 20 opinions, analysis. Don't answer except to the extent 21 it's a matter of public record. 22 MS. MARANZANO: For the record, I disagree. 23 I think that's a question as to the general legislative 24 purpose, which I believe the order allows us to ask. 25 MR. SWEETEN: Let's pull the order out.</p>



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<p>77</p> <p>1 MS. MARANZANO: I'm referring to Page 11.</p> <p>2 MR. SWEETEN: I'm going to go to the order</p> <p>3 on general purpose. Let's do that first. The order</p> <p>4 that I'm reading is dated 5/17/12. And it says, "It is</p> <p>5 ordered that to the extent such a privilege exists, that</p> <p>6 privilege does not protect testimony with respect to the</p> <p>7 general purpose or the purpose of the legislature as a</p> <p>8 whole in enacting Senate Bill 14 as opposed to the</p> <p>9 subjective intent of the legislator." So he can answer</p> <p>10 as to the general purpose of legislation. You're now</p> <p>11 asking him about, not legislation, but instead you're</p> <p>12 asking him about something called the Senate Committee</p> <p>13 on State Affairs interim report to the 80th Legislature.</p> <p>14 In particular you're asking him about paragraph 3A.2 of</p> <p>15 Page 29 of that report and what its purpose was. That</p> <p>16 is --</p> <p>17 MS. MARANZANO: No, no, no.</p> <p>18 MR. SWEETEN: That is not the same thing.</p> <p>19 He can talk about general purpose of a statute. He's</p> <p>20 not going to talk about general purpose of different</p> <p>21 bullet points within that recommendation. That is not</p> <p>22 contemplated by the order that we just read. Go ahead.</p> <p>23 MS. MARANZANO: Mr. Sweeten, I wasn't</p> <p>24 asking -- the way I interpret what you just read is that</p> <p>25 I'm not allowed to ask about his subjective motivations.</p>	<p>79</p> <p>1 asking him what he means within that bullet point. And</p> <p>2 that is not what the court has said. We will give</p> <p>3 general purpose. We're not going to give bullet by</p> <p>4 bullet interpretation of what you meant at this date on</p> <p>5 this report. That is beyond what the court has ordered.</p> <p>6 I think that is beyond the scope of the legislative</p> <p>7 privilege that I am now asserting.</p> <p>8 MS. MARANZANO: All right. Well, we've got</p> <p>9 to move on.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. And I think we are done with this document. So</p> <p>12 you can put that aside. And I believe before -- when we</p> <p>13 started looking at this deposition I asked you if you</p> <p>14 recall the photo ID bill being introduced in 2007 and I</p> <p>15 think you said no; is that correct?</p> <p>16 A. That's right. I don't recall a Senate Bill or</p> <p>17 House Bill or -- in 2007, whether we considered the</p> <p>18 bill. It seems like we did, but I can't recall</p> <p>19 specifically that.</p> <p>20 MS. MARANZANO: Okay. This we can mark as</p> <p>21 <u>Exhibit 28</u> because we've previously marked it.</p> <p>22 (Exhibit No. 28 was previously marked.)</p> <p>23 BY MS. MARANZANO:</p> <p>24 Q. I'm showing you what we're marking as deposition</p> <p>25 <u>Exhibit 28</u>. If you can take a look at that and let me</p>
<p>78</p> <p>1 I'm not asking that. I'm asking the committee's purpose</p> <p>2 for putting this bullet in. And I'm reading from the</p> <p>3 order that we got on June 5th, Page 11. It says, "With</p> <p>4 respect to deposition testimony this court has already</p> <p>5 ordered that foundational privilege questions are</p> <p>6 proper, as are questions regarding overall legislative</p> <p>7 purpose, as opposed to an individual legislator's motive</p> <p>8 with respect to the bill." I'm not asking for his</p> <p>9 motive. I'm asking for the committee's purpose.</p> <p>10 MR. SWEETEN: Show me where you just read</p> <p>11 because there's an important word in there.</p> <p>12 MS. MARANZANO: F.</p> <p>13 MR. SWEETEN: F what?</p> <p>14 MS. MARANZANO: The first sentence under F</p> <p>15 on Page 11.</p> <p>16 MR. SWEETEN: "With respect to the</p> <p>17 deposition testimony this court has already ordered that</p> <p>18 foundational privilege questions are proper," which</p> <p>19 we're allowing. You'll agree we're completely allowing.</p> <p>20 MS. MARANZANO: Yes.</p> <p>21 MR. SWEETEN: "As are questions regarding</p> <p>22 overall legislative purpose as opposed to an individual</p> <p>23 legislator's motive with respect to the bill." This</p> <p>24 isn't a bill. This is an interim report. It is a</p> <p>25 sub-subparagraph of an interim report. And you're</p>	<p>80</p> <p>1 know if you recognize this, this bill.</p> <p>2 A. I recognize it as House Bill 218. And it shows</p> <p>3 on there that it was apparently filed before the end of</p> <p>4 2007 legislative session, if it was filed. And it</p> <p>5 appears it was because it was assigned a number, 218.</p> <p>6 Q. Are you familiar with the provisions of House</p> <p>7 Bill 218?</p> <p>8 A. As we sit here today, no.</p> <p>9 Q. Can you take a look at Section 11 of the bill</p> <p>10 which is on page -- Section 11, looks like it starts on</p> <p>11 Page 9.</p> <p>12 A. Okay.</p> <p>13 Q. Does it appear that, for the most part, House</p> <p>14 Bill 218 follows House Bill 1706?</p> <p>15 MR. SWEETEN: You can refer to the text of</p> <p>16 the bill, matters of the public record.</p> <p>17 A. Well, it would take a while to do a side by side</p> <p>18 analysis.</p> <p>19 Q. For the most part, just generally.</p> <p>20 A. They are both bills relating to requiring a voter</p> <p>21 to present proof of identification.</p> <p>22 Q. And do you see that House Bill 218 allows for</p> <p>23 both photo and non-photo identification to be presented?</p> <p>24 A. If you would point me to where you reach that</p> <p>25 conclusion.</p>



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<p style="text-align: right;">81</p> <p>1 Q. Sure. So on Page 10 there's a subsection B.</p> <p>2 A. Yes, I see that.</p> <p>3 Q. Okay. And would you agree that allows for some</p> <p>4 forms of non-photo identification?</p> <p>5 A. It states that the following documentation is</p> <p>6 acceptable of proof of identification under this chapter</p> <p>7 and then it lists a number of things. And it appears</p> <p>8 that some of those things do not have a photo ID.</p> <p>9 Q. Did you or did anybody in your office my a role</p> <p>10 in the development of House Bill 218?</p> <p>11 A. Because it's a House Bill, no.</p> <p>12 Q. I'm sorry. You said no?</p> <p>13 A. We did not.</p> <p>14 Q. Did you have communications about House Bill 218?</p> <p>15 A. With whom?</p> <p>16 Q. Anybody. First let me just ask if you did?</p> <p>17 A. Not that I recall -- well, when?</p> <p>18 Q. At any point.</p> <p>19 A. Today?</p> <p>20 Q. Other than at this deposition, have you had</p> <p>21 communications about House Bill 218, that you recall, as</p> <p>22 you're sitting here?</p> <p>23 A. I don't recall any.</p> <p>24 Q. Are you aware of whether your staff had any</p> <p>25 communications about House Bill 218?</p>	<p style="text-align: right;">83</p> <p>1 memory, but it would reflect what happened to the bill.</p> <p>2 Q. And does it look like the bill passed the House?</p> <p>3 A. According to this document, it passed to</p> <p>4 engrossment on 4/23/07.</p> <p>5 Q. Did you have any communications with anybody</p> <p>6 about carrying House Bill 218 in the Senate?</p> <p>7 MR. SWEETEN: You can answer the question as</p> <p>8 phrased, but don't reveal the substance of any</p> <p>9 communications.</p> <p>10 A. I really don't remember. Some people may tell</p> <p>11 you they're going to carry a bill or whatever. But I</p> <p>12 don't recall in this particular instance how that came</p> <p>13 about.</p> <p>14 Q. (By Ms. Maranzano) As a general matter, how is</p> <p>15 it usually determined what senator will carry a bill</p> <p>16 that passes the House?</p> <p>17 A. There is no -- chairmen are different about how</p> <p>18 they do that. Some chairmen are very particular and</p> <p>19 some aren't. And so it just depends on what committee</p> <p>20 in the House or the Senate the bill goes to.</p> <p>21 Q. Can you tell me how you do it just as general</p> <p>22 matter?</p> <p>23 MR. SWEETEN: I think you're asking for him</p> <p>24 to reveal his mental impressions and thought process.</p> <p>25 How would determine -- carries a bill if he did. So</p>
<p style="text-align: right;">82</p> <p>1 A. I do not know.</p> <p>2 Q. If they did, do you think you would know?</p> <p>3 A. Not necessarily.</p> <p>4 Q. Did you monitor the consideration of House Bill</p> <p>5 218 in the House?</p> <p>6 A. No.</p> <p>7 Q. Do you recall if House Bill 218 was referred to</p> <p>8 the State Affairs Committee?</p> <p>9 A. I don't know if it passed the House. If it did</p> <p>10 pass the House, you know, whatever the record shows, the</p> <p>11 record shows. That was in 2007. So that was five years</p> <p>12 ago.</p> <p>13 (Exhibit No. 523 was marked.)</p> <p>14 BY MS. MARANZANO:</p> <p>15 Q. So I only have one copy of this. I'm showing you</p> <p>16 what we're marking as deposition Exhibit 523 which is --</p> <p>17 well, can you tell me what that is?</p> <p>18 A. The title is Texas Legislature Online History.</p> <p>19 Q. Can you take a look at that and just let me know</p> <p>20 if that refreshes your recollection at all as to the</p> <p>21 procedural history of House Bill 218?</p> <p>22 A. Well, it's a record of the history. I'm not sure</p> <p>23 it refreshes my recollection of anything.</p> <p>24 Q. Fair enough.</p> <p>25 A. But it appears that, yes, it doesn't refresh my</p>	<p style="text-align: right;">84</p> <p>1 objection; legislative privilege. Instruct not to</p> <p>2 answer.</p> <p>3 BY MS. MARANZANO:</p> <p>4 Q. Did you and Senator Fraser communicate about</p> <p>5 House Bill 218?</p> <p>6 MR. SWEETEN: You can answer the question as</p> <p>7 phrased.</p> <p>8 A. I'm sure we did.</p> <p>9 Q. (By Ms. Maranzano) Do you have any recollection</p> <p>10 of communicating with him?</p> <p>11 A. No. No.</p> <p>12 Q. Are you aware of any communications about House</p> <p>13 Bill 218 that reflect concerns that this bill would have</p> <p>14 a disproportionate impact on minority voters?</p> <p>15 MR. SWEETEN: Don't answer the question as</p> <p>16 phrased. This is more than a general subject matter</p> <p>17 description. If you want to rephrase it and put less of</p> <p>18 a -- you know, lead up to the question, then he can</p> <p>19 answer it if you rephrase it. Right now I'm going to</p> <p>20 instruct him not to answer that question.</p> <p>21 BY MS. MARANZANO:</p> <p>22 Q. Let me try it this way. Did you have any</p> <p>23 communications about House Bill 218 with groups</p> <p>24 representing minority voters?</p> <p>25 MR. SWEETEN: You can answer.</p>



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<p style="text-align: right;">85</p> <p>1 A. Communications with groups, what do you mean by</p> <p>2 groups?</p> <p>3 Q. (By Ms. Maranzano) Groups who are representing</p> <p>4 the interest of minority voters?</p> <p>5 A. The record of the committee will reflect those</p> <p>6 communications.</p> <p>7 Q. So apart from the committee, you didn't -- you</p> <p>8 aren't aware of any other communications?</p> <p>9 A. I'm not aware or recall any of those.</p> <p>10 Q. Do you recall any communications, apart from</p> <p>11 testimony in front of the committee, with local elected</p> <p>12 officials about House Bill 218?</p> <p>13 A. Do I recall, I really don't. When you say "local</p> <p>14 elected officials," what are you talking about, who are</p> <p>15 you talking about?</p> <p>16 Q. County officials, voter registrars.</p> <p>17 A. I don't recall any. If there are, typically with</p> <p>18 regard to procedural issues and things like that are</p> <p>19 necessary in implementing a new voting process, we hear</p> <p>20 from the committees, the election officials of</p> <p>21 committees; this causes this issue, this causes this,</p> <p>22 this causes that. You need to take into account that.</p> <p>23 And that would be typically done through the hearing</p> <p>24 process. We may have information about that. But with</p> <p>25 regard to the general policy consideration, I don't</p>	<p style="text-align: right;">87</p> <p>1 Bill 218?</p> <p>2 A. At what point?</p> <p>3 Q. Overall. Let me ask you. Do you have a</p> <p>4 recollection of it, first?</p> <p>5 A. I have a recollection, generally, of the fact</p> <p>6 that we had a voter ID bill go through the committee and</p> <p>7 considered by the Senate.</p> <p>8 Q. Was the bill amended in the committee?</p> <p>9 A. I don't recall. The record would have to reflect</p> <p>10 that.</p> <p>11 Q. Can you tell me how the witnesses who testified</p> <p>12 on House Bill 218 were selected?</p> <p>13 MR. SWEETEN: Don't answer the question. It</p> <p>14 would call for your mental impressions, thoughts,</p> <p>15 opinions about legislation.</p> <p>16 BY MS. MARANZANO:</p> <p>17 Q. And you're following your counsel's instruction?</p> <p>18 A. Yes.</p> <p>19 Q. Was House Bill 218 voted out of committee, to the</p> <p>20 best of your recollection?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall if it was voted out of committee on</p> <p>23 party line?</p> <p>24 A. The record would have to reflect the record vote</p> <p>25 of the members of the Senate and the committee.</p>
<p style="text-align: right;">86</p> <p>1 recall any.</p> <p>2 Q. What was the purpose of House Bill 218?</p> <p>3 A. To preserve voter integrity or ballot integrity.</p> <p>4 Q. Based on the public record, was there any</p> <p>5 evidence that a problem existed with ballot integrity?</p> <p>6 MR. SWEETEN: Objection to the extent that</p> <p>7 it asks for your mental impressions about any problem</p> <p>8 that any legislation was attempting to address. You can</p> <p>9 refer to the public record as to anything you've heard</p> <p>10 regarding a problem. But don't reveal your mental</p> <p>11 impressions or thoughts about why you worked on a bill,</p> <p>12 what a bill was meant to address. You can just discuss</p> <p>13 what's in the public record.</p> <p>14 A. The public record reflects what information the</p> <p>15 committee heard on House Bill 218 in 2007. I wouldn't</p> <p>16 have any independent recollection of any of that.</p> <p>17 Q. (By Ms. Maranzano) Was House Bill 218 -- was</p> <p>18 part of the purpose of House Bill 218 to prevent</p> <p>19 non-citizens from voting?</p> <p>20 A. No.</p> <p>21 Q. Are you familiar with any statements that</p> <p>22 Representative Betty Brown made on the floor about House</p> <p>23 Bill 218?</p> <p>24 A. No.</p> <p>25 Q. Do you recall the Senate's consideration of House</p>	<p style="text-align: right;">88</p> <p>1 Q. And as you sit here today, do you have any</p> <p>2 recollection?</p> <p>3 A. I would not speculate.</p> <p>4 Q. So in 2006, is it fair to say that based on that</p> <p>5 interim report, the committee made no recollection --</p> <p>6 made no recommendation on photo ID laws?</p> <p>7 A. You're going to have to repeat that. I'm sorry.</p> <p>8 I didn't follow it.</p> <p>9 Q. In December 2006, we looked at the interim</p> <p>10 committee report, and is it fair to say the committee</p> <p>11 made no recommendation as to photo ID?</p> <p>12 MR. SWEETEN: You can refer to matters of</p> <p>13 the public record.</p> <p>14 A. I think the committee report is clear as to what</p> <p>15 it did and didn't do.</p> <p>16 Q. (By Ms. Maranzano) Well, let me ask you this.</p> <p>17 Is there anything in the public record that you can</p> <p>18 testify about today that would reflect a change between</p> <p>19 when you issued the report in December of 2006 and when</p> <p>20 you voted HB 218 out of committee?</p> <p>21 A. I can't answer that because I don't know and</p> <p>22 haven't looked at it.</p> <p>23 MR. SWEETEN: And I'll instruct you as to</p> <p>24 legislative privilege. Don't reveal your mental</p> <p>25 impressions.</p>



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<p>89</p> <p>1 A. I do not want to run afoul or ignore the</p> <p>2 legislative privilege that I am asserted in this case.</p> <p>3 Q. (By Ms. Maranzano) Did each -- did HB 218</p> <p>4 require a two-thirds majority vote of senators to bring</p> <p>5 that bill to the floor of the Senate?</p> <p>6 A. The bill didn't require it.</p> <p>7 Q. Did the Senate rules require it?</p> <p>8 A. The Senate rules require bills to be brought up</p> <p>9 in the regular order of business.</p> <p>10 Q. And was House Bill 218 brought up in the regular</p> <p>11 order of business?</p> <p>12 A. No.</p> <p>13 Q. So in order to bring it up out of order, did it</p> <p>14 require a two-thirds vote?</p> <p>15 A. In 2007, to suspend the rules you had to have a</p> <p>16 two-thirds vote.</p> <p>17 Q. What's the purpose of that requirement, that you</p> <p>18 needed two-thirds vote to suspend the regular order of</p> <p>19 business?</p> <p>20 MR. SWEETEN: Are you saying in the 2007</p> <p>21 session, the two-thirds.</p> <p>22 MS. MARANZANO: I was asking more generally,</p> <p>23 actually.</p> <p>24 MR. SWEETEN: You can give the general</p> <p>25 purpose. Objection; vague. Because I don't think we're</p>	<p>91</p> <p>1 blend of a rule and a tradition. And so to that end,</p> <p>2 there's not really a good answer that I can give</p> <p>3 speaking on behalf of the whole Senate as a general</p> <p>4 purpose.</p> <p>5 Q. Well, to be clear, I'm not interested in your</p> <p>6 subjective opinion about it. I'm just interested in</p> <p>7 your characterization of the legislative purpose.</p> <p>8 ATTORNEY2: Objection; asked and answered.</p> <p>9 BY MS. MARANZANO:</p> <p>10 Q. Do you have anything else to add?</p> <p>11 A. I probably don't.</p> <p>12 Q. Okay. Are most bills brought to the floor with a</p> <p>13 two-thirds vote?</p> <p>14 MR. SWEETEN: Answer as a general matter.</p> <p>15 A. In my experience, yes. But not all.</p> <p>16 Q. (By Ms. Maranzano) Can you tell me about the</p> <p>17 ones that went to the floor without a two-thirds vote?</p> <p>18 A. Well, over what period of time? I mean I've been</p> <p>19 in there 14 years.</p> <p>20 Q. Well, how many times -- I'm sorry. I didn't mean</p> <p>21 to interrupt your answer.</p> <p>22 A. A number of times.</p> <p>23 Q. Can you tell me how in the 14 years?</p> <p>24 A. No.</p> <p>25 Q. More than five?</p>
<p>90</p> <p>1 talking about a specific rule. But you can give a</p> <p>2 general purpose to -- if you can understand what she's</p> <p>3 asking you about.</p> <p>4 BY MS. MARANZANO:</p> <p>5 Q. My question is about the requirement or the</p> <p>6 tradition in the Senate that when bills go out of order</p> <p>7 that it requires a two-thirds majority vote.</p> <p>8 A. There are 31 members of the Texas Senate. And</p> <p>9 there are 31 different general purposes of what that</p> <p>10 rule is all about. So I couldn't give you -- I couldn't</p> <p>11 speak for anybody else. And so the general purpose is</p> <p>12 obviously to require two-thirds vote to bring up a bill.</p> <p>13 But I can't tell you what the -- I don't know of any law</p> <p>14 reviews that discuss that or -- it has different</p> <p>15 meanings to different members of the Senate, if you're a</p> <p>16 rule member or what. It has different meetings.</p> <p>17 Q. Would it be fair to say that it's an effort to</p> <p>18 get the senators to reach some sort of consensus?</p> <p>19 MR. SWEETEN: You can provide and answer as</p> <p>20 to the general purpose of the bill. Don't discuss</p> <p>21 anything further than that or whatever rule she's</p> <p>22 referring to.</p> <p>23 A. Again, I would think that it's -- it has -- to</p> <p>24 different members it has different general -- there's</p> <p>25 different interpretations because it is a kind of a</p>	<p>92</p> <p>1 A. Sure.</p> <p>2 Q. More than ten?</p> <p>3 A. Yeah.</p> <p>4 Q. More than 15?</p> <p>5 A. Yes.</p> <p>6 Q. More than 20?</p> <p>7 A. Your question is how many times have bills come</p> <p>8 to the Senate floor with a lack of -- with only 16 votes</p> <p>9 or without 21 votes.</p> <p>10 Q. Uh-huh.</p> <p>11 A. Multiple times. More than you've asked. I</p> <p>12 believe more than you have stated.</p> <p>13 Q. Okay. And I think I left off at 20. Would you</p> <p>14 say it's around -- can you just give me an approximate</p> <p>15 number?</p> <p>16 A. No, I really can't. Because I know -- generally</p> <p>17 I can't. The 21 vote rule is often debated. But again,</p> <p>18 you go back to Bullock, Hobby and other Lieutenant</p> <p>19 Governors. Either the rule has been -- there have been</p> <p>20 special orders or other measures to not apply the rule</p> <p>21 or that threat has been used. So it's an interesting</p> <p>22 part of Texas history. But it is -- again, there's no</p> <p>23 specific thing. It has been done a number of times,</p> <p>24 though.</p> <p>25 Q. Do you know what the partisan makeup of the</p>



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<p style="text-align: right;">93</p> <p>1 Senate was when the two-thirds rule was suspended under  2 Lieutenant Governor Bullock?  3 A. It was probably -- I believe -- the Republicans  4 did not have a majority until December of '96. So I  5 believe -- I don't believe that it was done in '97. So  6 it would have been -- before that it probably would have  7 been Democrat majority.  8 Q. Do you know by how much?  9 A. No.  10 Q. How about under Lieutenant Governor Hobby?  11 A. I don't believe the Republicans had a majority  12 under Hobby.  13 Q. Do you have any idea by what percentage or by  14 what numbers they were in the minority?  15 A. No. You would have to look -- it would be easy  16 to determine.  17 Q. Can you provide the circumstances under which  18 House Bill 218 was voted on by the Senate?  19 A. No. Is that the 2007 bill?  20 Q. Yeah.  21 A. What was your question?  22 Q. The circumstances on which it was voted on in the  23 Senate, do you recall anything about that vote?  24 A. I don't understand the question. So, no, I  25 can't.</p>	<p style="text-align: right;">95</p> <p>1 often on and off the floor or absent from time to time.  2 There's an excused absence. There's just people not  3 there. And so I don't know exactly what the record  4 shows for that day.  5 Q. And if somebody has an excused absence, votes are  6 still taken; is that correct?  7 A. Yes, as long as there's a quorum.  8 Q. Are you aware of any conversations that Senator  9 Uresti had with any members of the Senate about House  10 Bill 218?  11 A. No.  12 Q. Were you aware in May of 2007, based on the  13 public record, that there were concerns that House Bill  14 218 would disproportionately impact minority voters?  15 MR. SWEETEN: You can testify to matters on  16 the public record. Don't testify as to communications  17 you've had with others or to matter subject to  18 privilege.  19 A. To the extent those comments were made on either  20 a debate on the Senate floor, which is what I understand  21 the time frame you're talking about now, we're out of  22 committee we're on the floor, is that the public record  23 would reflect those concerns if they were raised.  24 Q. But in May of 2007, were you aware of those  25 concerns?</p>
<p style="text-align: right;">94</p> <p>1 Q. Okay. Well, let me ask you this. Do you recall  2 it being voted on by the Senate?  3 A. I recall there was a vote.  4 Q. Who made the decision, if this is part of the  5 public record, to bring this bill to the floor, to a  6 vote of the Senate?  7 MR. SWEETEN: When you're saying "bill," are  8 we talking about --  9 MS. MARANZANO: We're talking about House  10 Bill 218.  11 MR. SWEETEN: To the extent you're not  12 revealing legislative privilege, you can answer it. But  13 don't reveal matters of privilege, including  14 communications you've had with others or mental  15 impressions.  16 A. I do not know who made the decision to bring the  17 House Bill in 2007 to a vote.  18 Q. (By Ms. Maranzano) Is that usually the  19 Lieutenant Governor's decision?  20 A. Generally the rules allow the Lieutenant Governor  21 to set the calendar.  22 Q. Do you know if any members of the Senate were not  23 present when the vote was taken?  24 A. I don't recall if there were members, you know,  25 either present or on the floor or what. Members are</p>	<p style="text-align: right;">96</p> <p>1 A. If I was on the Senate floor and I heard them on  2 the -- as part of the public record, the public record  3 is the public record.  4 Q. Based on the public record, were any concerns  5 expressed about taking a vote on House Bill 218 when  6 some members weren't present?  7 A. The record will reveal that.  8 Q. Do you have any recollection about this  9 occurring?  10 A. If I do, it would be subject to the legislative  11 privilege.  12 Q. I'm just asking you about the public record?  13 A. The public record is the public record. And that  14 is -- if those statements were made on the public  15 record, those statements were made on the public record  16 and they speak for themselves. I'm sure Senator Ellis  17 made a comment or somebody else. This is what the  18 public record is.  19 Q. Why are you sure Senator Ellis made a comment?  20 A. Because he was active in this issue.  21 Q. And what -- I guess I'm losing you. You're sure  22 he made a comment because some members weren't present  23 on the floor?  24 A. No. On the public record, on the public issue of  25 the debate on the bill. The issue -- the record will</p>



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<p style="text-align: right;">97</p> <p>1 reflect who and what was said.</p> <p>2 Q. Do you recall that in was a request made to</p> <p>3 verify the vote on House Bill 218?</p> <p>4 A. No. But there may have been.</p> <p>5 Q. Are you aware that Senator Uresti had called in</p> <p>6 sick that day?</p> <p>7 MR. SWEETEN: Don't reveal matters subject</p> <p>8 to legislative privilege in answering that question.</p> <p>9 You can refer to matter of public record.</p> <p>10 A. I'll refer to the record.</p> <p>11 Q. (By Ms. Maranzano) What's Senator Uresti's race?</p> <p>12 A. Well, I think Senator Uresti is Hispanic.</p> <p>13 Q. What part of Texas does he represent?</p> <p>14 A. He has a large district. It is similar to mine</p> <p>15 in that it -- it abuts the mine. It's in West Texas,</p> <p>16 far West Texas, but he also has some urban areas. And</p> <p>17 he, at that time, was representing part of El Paso as</p> <p>18 well.</p> <p>19 Q. Had he expressed concerns on the public record</p> <p>20 about the impact of House Bill 218 on his constituents?</p> <p>21 A. Public record will reflect what concerns, if any,</p> <p>22 he expressed.</p> <p>23 Q. Do you recall that House Bill 218 failed to</p> <p>24 obtain a two-thirds majority vote?</p> <p>25 A. It apparently did not pass that session.</p>	<p style="text-align: right;">99</p> <p>1 A. Okay.</p> <p>2 Q. Okay. Do you see that this includes a letter</p> <p>3 from the Lieutenant Governor related to House Bill 218?</p> <p>4 A. As reported in this media outlet.</p> <p>5 Q. And the letter that's printed in this media</p> <p>6 outlet asserts that the photo identification</p> <p>7 requirements will prevent voting by persons who are not</p> <p>8 US citizens, right?</p> <p>9 A. Where does it say that?</p> <p>10 MR. SWEETEN: Can you reread the question</p> <p>11 for me, please?</p> <p>12 (Requested question was read.)</p> <p>13 BY MS. MARANZANO:</p> <p>14 Q. And Senator, below the -- in the second letter,</p> <p>15 below that topic, "This is a letter from Lieutenant</p> <p>16 Governor David Dewhurst on voter ID." In the second</p> <p>17 paragraph, I just want to read you a sentence that says,</p> <p>18 "I want people to consider that with 8 to 12 million</p> <p>19 illegal aliens currently living in the US, the basic</p> <p>20 American principal of "one person, one vote" is in</p> <p>21 danger," correct?</p> <p>22 A. Well, that's what -- that's what that says.</p> <p>23 Q. Right. Do you believe that the Lieutenant</p> <p>24 Governor's letter is not asserting that photo ID</p> <p>25 requirements will prevent persons voting who are not US</p>
<p style="text-align: right;">98</p> <p>1 Q. Do you know if there were any additional actions</p> <p>2 taken on House Bill 218 after it failed to obtain the</p> <p>3 two-thirds majority vote?</p> <p>4 MR. SWEETEN: You can answer based on the</p> <p>5 public record.</p> <p>6 A. I don't understand the question. It's not clear</p> <p>7 enough to me to respond accurately.</p> <p>8 Q. (By Ms. Maranzano) Was there any additional</p> <p>9 action taken on House Bill 218 after it failed to obtain</p> <p>10 a two-thirds majority vote?</p> <p>11 MR. SWEETEN: Again, you can refer to</p> <p>12 matters of the public record in answering the question.</p> <p>13 A. I don't recall based on the question.</p> <p>14 MS. MARANZANO: This has been previously</p> <p>15 marked as Exhibit 3.</p> <p>16 (Exhibit No. 3 was previously marked.)</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. Senator, I'm showing you what we're marking for</p> <p>19 the record as deposition Exhibit 3. And I would like to</p> <p>20 direct your attention to -- there's a letter that's</p> <p>21 issued from Lieutenant Governor David Dewhurst. Do you</p> <p>22 recall this letter? Let me state for the record, what</p> <p>23 I'm showing you is an article from the Texas Weekly.</p> <p>24 A. Let me have just a few minutes to read this.</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">100</p> <p>1 citizens?</p> <p>2 MR. SWEETEN: Don't answer the question.</p> <p>3 Legislative privilege.</p> <p>4 MS. MARANZANO: I'm asking him about the</p> <p>5 letter.</p> <p>6 MR. SWEETEN: You can ask him about what</p> <p>7 this says. You can't ask him about his beliefs about</p> <p>8 legislation or about what he thinks about specific</p> <p>9 legislation. Those are his thoughts and mental</p> <p>10 impressions. If you're asking him if that's what it</p> <p>11 says, he's free to answer that.</p> <p>12 BY MS. MARANZANO:</p> <p>13 Q. I'm asking if the Lieutenant Governor made that</p> <p>14 assertion in this letter.</p> <p>15 A. I can't speak for the Lieutenant Governor on what</p> <p>16 he meant or intended or whether or not this is accurate.</p> <p>17 So I don't really have an opinion on that.</p> <p>18 Q. Let me ask you this. Is there anything in the</p> <p>19 public record that would support a contention that photo</p> <p>20 identification requirements prevent persons from voting</p> <p>21 who are not US citizens?</p> <p>22 MR. SWEETEN: Calls for matters of</p> <p>23 legislative privilege. You can refer to matters in the</p> <p>24 public record, but don't reveal your thoughts and mental</p> <p>25 impressions about any specific legislation.</p>



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<p>101</p> <p>1 A. You would have to refer to the legislative record</p> <p>2 to --</p> <p>3 Q. Anything you can add today?</p> <p>4 A. No, ma'am.</p> <p>5 Q. Do you see that in this letter -- I'm sorry. In</p> <p>6 this article there was a -- there are two letters from</p> <p>7 the Lieutenant Governor that are printed? There's a</p> <p>8 letter and then there's a corrected letter.</p> <p>9 A. This document which's a media report indicates</p> <p>10 that. I don't know about the authenticity of it?</p> <p>11 Q. You have no recollection of the?</p> <p>12 A. No, I don't subscribe to the Texas Weekly and did</p> <p>13 not review this. So this is the first time I've seen</p> <p>14 this document.</p> <p>15 Q. And apart from the letter -- apart from the</p> <p>16 article, do you recall ever seeing either of these</p> <p>17 letters from the Lieutenant Governor?</p> <p>18 MR. SWEETEN: You can answer.</p> <p>19 A. No, I don't. Let me correct, my staff may read</p> <p>20 this Texas Weekly, but I don't. I don't recall seeing</p> <p>21 this letter or -- I'm not even sure I recall hearing</p> <p>22 about it. It's been five years ago.</p> <p>23 Q. (By Ms. Maranzano) Is a voter registration</p> <p>24 applicant's citizenship status -- well, does a voter</p> <p>25 registration applicant affirm their citizenship status</p>	<p>103</p> <p>1 A. I don't recall or have any knowledge of that</p> <p>2 other than if -- I don't even know if there's anything</p> <p>3 on the public record on that.</p> <p>4 Q. (By Ms. Maranzano) Have you heard anyone in the</p> <p>5 legislature say there's a connection between photo ID</p> <p>6 bills and the growth of population? I'm not talking</p> <p>7 about private communications you may have had.</p> <p>8 MR. SWEETEN: You the can discuss matters of</p> <p>9 the public record.</p> <p>10 A. You would have to refer to the public record.</p> <p>11 Q. (By Ms. Maranzano) How about anyone in the</p> <p>12 governor's office, made such an assertion?</p> <p>13 MR. SWEETEN: Same instruction. Legislative</p> <p>14 privilege. But you can reveal matters of the public</p> <p>15 record.</p> <p>16 A. You would have to look -- refer to public record</p> <p>17 on that issue.</p> <p>18 Q. (By Ms. Maranzano) Are you familiar with a</p> <p>19 decision by the name of Crawford versus Marion County?</p> <p>20 MR. SWEETEN: Don't reveal your thoughts or</p> <p>21 mental impressions about legislation, your analysis or</p> <p>22 motivation in answering the question. You can reveal</p> <p>23 matters of the public record.</p> <p>24 A. When you say "familiar," I'm not sure what you</p> <p>25 mean by that. If that is the Georgia case, I think it</p>
<p>102</p> <p>1 on a voter registration application?</p> <p>2 MR. SWEETEN: Under present law?</p> <p>3 MS. MARANZANO: Under present law.</p> <p>4 MR. SWEETEN: You can answer the question if</p> <p>5 you know.</p> <p>6 A. I don't know. I would have to look at the law.</p> <p>7 Q. (By Ms. Maranzano) What ethnic group makes up</p> <p>8 the largest percentage of the immigrant population in</p> <p>9 Texas?</p> <p>10 A. I don't know for a fact. I think, generally, I</p> <p>11 believe that the Hispanic growth in Texas is well-known</p> <p>12 to be flourishing.</p> <p>13 Q. Based on public record, is there any connection</p> <p>14 between photo ID bills and the growth of non-citizen</p> <p>15 population in Texas?</p> <p>16 MR. SWEETEN: Don't answer her question. It</p> <p>17 calls for matters of legislative privilege. Instruct</p> <p>18 not to answer.</p> <p>19 BY MS. MARANZANO:</p> <p>20 Q. Have you heard an assertion that photo ID bills</p> <p>21 are connected to the growth of non-citizen population in</p> <p>22 Texas?</p> <p>23 MR. SWEETEN: You can answer based on</p> <p>24 matters of the public record. Don't make a legislative</p> <p>25 privilege.</p>	<p>104</p> <p>1 may be referred to in the public record. If that</p> <p>2 involves the Georgia voter ID.</p> <p>3 Q. The Crawford opinion, I believe was referred to</p> <p>4 in the public record. It's a Supreme Court decision</p> <p>5 about a law in Indiana. Does that refresh your</p> <p>6 recollection at all?</p> <p>7 A. Right. Right. It does.</p> <p>8 Q. Have you read that opinion?</p> <p>9 A. I have not analyzed it.</p> <p>10 Q. Have you read it?</p> <p>11 MR. SWEETEN: You don't have to say if</p> <p>12 you've read the decision or not. That would reveal your</p> <p>13 thoughts, mental impressions or processes and</p> <p>14 legislative privilege. Objective; legislative</p> <p>15 privilege. You can refer to matters in the public</p> <p>16 record.</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. I assume you can't answer the question?</p> <p>19 A. I think the public record would answer the</p> <p>20 question.</p> <p>21 Q. Did you or your staff have any communications</p> <p>22 with officials in Indiana regarding photo ID laws?</p> <p>23 MR. SWEETEN: You can answer the question.</p> <p>24 A. I did not. I do not know if my staff did or not.</p> <p>25 Q. (By Ms. Maranzano) Are you familiar with a photo</p>



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<p>105</p> <p>1 identification bill that was introduced in the 2009 2 legislative session? 3 A. You're going to have to be more specific. There 4 are many bills. 5 Q. There were many photo identification bills? 6 A. I believe -- I assume there was. I do not know. 7 I just know that members file bills. 8 Q. All right. 9 A. There's nothing to prevent a member from filing a 10 bill. 11 Q. I was asking, just to be clear, I was asking 12 specifically about the photo identification bills? 13 A. Well, I'm familiar with one bill. 14 Q. Okay. Which bill is that? 15 A. It's the bill that was considered by the Senate 16 in 2009. 17 MS. MARANZANO: Can we mark this as 29? 18 (Exhibit No. 29 was previously marked.) 19 BY MS. MARANZANO: 20 Q. Are you referring to Senate Bill 362, Senator? 21 A. Yes, ma'am. 22 Q. I'm showing you what we're marking as deposition 23 Exhibit 29, previously marked exhibit. And can you look 24 at it and tell me if you recognize this document? 25 A. I assume this is the introduced version of Senate</p>	<p>107</p> <p>1 voter to present proof of identification. And it seems 2 like both bills have photo ID or alternatives. 3 Q. Can you look at Section 10, for me? And, in 4 particular, Section 6 -- Subsection 6 of that, it says, 5 "A valid identification card that contains the person's 6 photograph and is issued by an agency or institution of 7 the federal government or an agency institution or 8 political subdivision of this State." Do you believe 9 that would include a State University? 10 A. I'm not sure what you're referring to, quite 11 frankly. So I'm a little slow on reading. 12 Q. Oh, yeah. I'm sorry. 13 A. Six is struck -- Subsection 6 is struck on my 14 bill. 15 Q. Well, I'm looking at the section that -- 16 A. So it would be now, 7. I'm sorry, 6. I see. 17 Yeah. It would be U-6. And it refers to a "valid 18 identification card that contains the person's 19 photograph and is issued by an agency of the federal 20 government or an agencies institution or political 21 subdivision of the State." Is that what you're 22 referring? 23 Q. Uh-huh. Would that include identifications 24 issued by a State University? 25 MR. SWEETEN: You can testify based on the</p>
<p>106</p> <p>1 Bill 362, but I don't know. You have given me -- this 2 doesn't necessarily reflect what -- what this is, other 3 than Senate Bill 362. Was it the original filed 4 version, were there changes. I don't recall what 5 version this is that you're referring to here. 6 Q. Okay. Is there a way, from looking at this bill, 7 that you could determine that? 8 A. No. 9 Q. I can represent to you that it is the engrossed 10 version. And if you will look at Section 10 of the 11 bill, which is on Page 5, do you see that list "forms of 12 identification"? 13 A. Yes. 14 Q. Do you see that Subsection B provides for some 15 forms of identification that don't have photographs on 16 them? 17 A. I believe it does. 18 Q. Do you believe that Senate Bill 362 follows House 19 Bill 218, for the most part? 20 A. I don't know. I haven't analyzed it. 21 Q. Well, just generally? 22 MR. SWEETEN: You can refer to the text of 23 the bill. Don't reveal your impressions. 24 A. I don't know, generally. It appears to me that 25 they're both bills that require -- relate to requiring a</p>	<p>108</p> <p>1 text of the bill. 2 A. An institution of the State would -- may be a 3 little bit vague and ambiguous. But it's not -- one 4 could argue that it means a higher Ed institution. 5 Q. Were you involved in the development of Senate 6 Bill 362? 7 MR. SWEETEN: Objection; vague. 8 A. What do you mean by "development"? 9 Q. (By Ms. Maranzano) Were you involved in the 10 concept of creating this bill? 11 A. No. 12 Q. Were you involved in the drafting of this bill? 13 A. No. 14 Q. Was anybody in your staff? 15 A. I don't think so. 16 Q. Would you know if your staff had been involved in 17 the drafting of this bill? 18 A. Not necessarily. I usually would. From time to 19 time members would ask members of my staff issues on 20 questions about things. So I don't know. But that was 21 not our bill and we weren't sponsoring it. So it's 22 unlikely we were involved to any large degree in 23 developing the bill. Now, there may have been questions 24 that may have been answered. But I don't know what 25 those were.</p>



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<p>109</p> <p>1 Q. If questions had been asked would they likely 2 have been directed to Jennifer Fagan? 3 MR. SWEETEN: Objection; calls for 4 speculation. You can answer. Objection; vague, too. 5 A. Or the Committee staff, generally. Jennifer 6 would direct the question or answer it. 7 Q. (By Ms. Maranzano) How many staff work for the 8 committee? 9 A. I don't recall. It depends, five or six 10 during -- during a session. 11 Q. Did you have communications with Senator Fraser 12 about Senate Bill 362? 13 MR. SWEETEN: You can answer if you had 14 communications. 15 A. We did. 16 Q. (By Ms. Maranzano) You did. How many? 17 A. I can't tell you. 18 Q. Can you give me an approximate number? 19 A. No. 20 Q. Can you tell me when those communications 21 occurred? 22 A. Between the time the bill was filed and between 23 the time it was passed out of the Committee of the 24 Whole. 25 Q. Any communications before it was filed with</p>	<p>111</p> <p>1 Q. (By Ms. Maranzano) You can't recall any? 2 A. Not specifically. 3 Q. Do you recall whether the legislature considered, 4 based on the public record, adding additional forms of 5 identification based on Senate Bill 362? 6 MR. SWEETEN: Don't answer. It calls for 7 mental impression, thoughts about legislation. It also 8 would implicate other communications with other 9 legislators so don't answer the question as phrased. If 10 you interpret the word "consider" to mean was it 11 discussed on the public record, that's fair game. But 12 consideration gets into the privilege. Instruct not to 13 answer on that basis. But with my instruction. 14 BY MS. MARANZANO: 15 Q. Let me ask you this. Were proposals made on the 16 public record, such as amendments or other proposals to 17 add additional forms of identification to Senate Bill 18 362? 19 MR. SWEETEN: You can answer as phrased. 20 A. By "proposed," do you mean amendments. 21 Q. (By Ms. Maranzano) Amendments or any other kind 22 of proposals. I'm not of aware of anything other than 23 amendments, but you may be. 24 A. The record would reflect that if there were. 25 Q. And what's your recollection?</p>
<p>110</p> <p>1 Senator Fraser? 2 A. Probably. 3 Q. And would those have been verbal communications 4 or written? 5 A. Yes, verbal. 6 Q. Are you aware of the source of the legislative 7 language in Senate Bill 362? 8 MR. SWEETEN: Don't reveal matters of 9 privilege. 10 A. I'm not. 11 Q. (By Ms. Maranzano) Are you aware of how this 12 list of acceptable forms of identification was arrived 13 at? 14 MR. SWEETEN: Don't answer. Objection; 15 legislative privilege. 16 BY MS. MARANZANO: 17 Q. Was there any discussion on the public record 18 about these forms of identification and whether or not 19 any additional forms of identification should be added 20 to this bill? 21 MR. SWEETEN: You can answer as phrased. 22 A. I recall there was an a lot of discussion on the 23 public record about a lot of things. And I would assume 24 that some of these issues were discussed, but you would 25 have to refer to the record, generally.</p>	<p>112</p> <p>1 A. You know, I vaguely remember that nobody offered 2 amendments in 2009. But I may be wrong on that. The 3 record would have to reflect that in the committee. Now 4 I don't know about on the floor. If you're talking 5 about the committee. But for some reason I recall there 6 were no amendments offered. But I may be incorrect. 7 The record would reflect that. 8 Q. And how about on the floor? 9 A. I don't recall that. 10 Q. Were there discussions on the public record about 11 how many registered voters did not possess one of the 12 forms of identification listed in Senate Bill 362? 13 MR. SWEETEN: You can answer. 14 A. The record will reflect that clearly if there 15 was. I'm not going to speculate on that. 16 Q. (By Ms. Maranzano) What's your recollection, as 17 you sit here today? 18 A. I don't recall. 19 Q. You don't recall that happening? 20 A. Recall what happening? 21 Q. Discussions about how many registered voters 22 would not possess one of the forms of identification 23 listed in Senate Bill 362? 24 A. There were a lot of discussions over a period of 25 time that I, you know, can't remember specifically if</p>



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<p>113</p> <p>1 there were discussions framed exactly as you have framed</p> <p>2 it or generally as you have framed it. I believe there</p> <p>3 were a number of discussions as the record will reflect</p> <p>4 regarding issues similar to that, generally.</p> <p>5 Q. Were there discussions on the public record about</p> <p>6 doing an analysis to determine how many voters would</p> <p>7 possess one of those forms of ID.</p> <p>8 A. I don't recall whether there was or not. The</p> <p>9 record would have to reflect that.</p> <p>10 Q. If Senate Bill 362 had passed, would it have been</p> <p>11 subject to the requirements of Section 5?</p> <p>12 MR. SWEETEN: Don't reveal matters of</p> <p>13 legislative privilege. You can answer if you would not</p> <p>14 be doing that.</p> <p>15 A. I believe as we discussed earlier, Texas is a</p> <p>16 state that is subject to Section 5.</p> <p>17 Q. (By Ms. Maranzano) Is that a "yes" or "no"?</p> <p>18 A. Well, if you or subject to Section 5 and it</p> <p>19 changes the vote procedure, I would assume it would</p> <p>20 require preclearance.</p> <p>21 Q. Did the legislature take the position that after</p> <p>22 Crawford was covered by Section 5 of the Voting Rights</p> <p>23 Act, did not meet the analysis of the impact of photo --</p> <p>24 photo identification laws on minority voters?</p> <p>25 MR. SWEETEN: In answering the question,</p>	<p>115</p> <p>1 determine that.</p> <p>2 Q. (By Ms. Maranzano) So you have no independent</p> <p>3 recollection of whether there was discussion of any</p> <p>4 particular problems that Senate Bill 362 was designed to</p> <p>5 correct within the realm of voter integrity as you</p> <p>6 described the purpose?</p> <p>7 A. I believe the public record is clear on what was</p> <p>8 discussed along those lines and that would be the best</p> <p>9 source, what the public record contains.</p> <p>10 Q. But your -- I mean, I'm just trying to</p> <p>11 understand --</p> <p>12 A. Other than my recollection, which would be</p> <p>13 analysis and mental process. So what I'm trying to say</p> <p>14 is simply, that was three years ago. And the record is</p> <p>15 created to preserve what was said. And that would be</p> <p>16 the best evidence of what was said regarding those</p> <p>17 things, not my recollection, which is basically a mental</p> <p>18 impression.</p> <p>19 Q. Well, your recollection of the public record is</p> <p>20 what I'm asking you about?</p> <p>21 A. Public record?</p> <p>22 Q. Not your impressions of the public record?</p> <p>23 A. Well, the public record is the public record,</p> <p>24 period. It is the record.</p> <p>25 Q. Yes. But you're being deposed today so I can get</p>
<p>114</p> <p>1 don't reveal matters of legislative privilege. Also</p> <p>2 objection to the question as vague.</p> <p>3 A. I can't speak for the legislature.</p> <p>4 Q. (By Ms. Maranzano) Was there any position, such</p> <p>5 as that taken on the public record?</p> <p>6 A. I don't know.</p> <p>7 Q. What was the purpose of Senate Bill 362?</p> <p>8 MR. SWEETEN: You can answer the general</p> <p>9 purpose.</p> <p>10 A. The general purpose is to preserve ballot</p> <p>11 integrity.</p> <p>12 Q. (By Ms. Maranzano) Was this law designed to</p> <p>13 correct any specific problem?</p> <p>14 MR. SWEETEN: Don't answer the question. It</p> <p>15 calls for matters of legislative privilege. Instruct</p> <p>16 not to answer.</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. Was there anything on the public record that</p> <p>19 would suggest that that law was designed to address any</p> <p>20 specific problem with regard to the ballot integrity?</p> <p>21 MR. SWEETEN: Don't reveal your thoughts and</p> <p>22 mental impressions. You can refer to factual matters on</p> <p>23 the public record in answering the question. Don't</p> <p>24 reveal your analysis.</p> <p>25 A. You would just have to look at the record to</p>	<p>116</p> <p>1 your knowledge. So that's what I'm asking you to</p> <p>2 explain to me. Things that happened on the public</p> <p>3 record. So let me ask you this.</p> <p>4 MR. SWEETEN: I just want to -- he can --</p> <p>5 and I just want to be clear. He can say whether he</p> <p>6 recalls it being addressed in the public record. So I</p> <p>7 will let him do that. Obviously, to the extent you're</p> <p>8 asking for mental impressions or thought processes about</p> <p>9 the bill, that's legislative privilege. But he can say</p> <p>10 if he recalls. And I think, for the most part, he says</p> <p>11 he doesn't recall. So I just want to make sure my</p> <p>12 instruction is clear on that point.</p> <p>13 BY MS. MARANZANO:</p> <p>14 Q. Was there -- was any part of the purpose of</p> <p>15 Senate Bill 362 to prevent non-citizens from voting?</p> <p>16 A. No.</p> <p>17 Q. Based on the public record, was there any</p> <p>18 evidence that Senate Bill 362 would be more effective at</p> <p>19 preventing in person voter impersonation than the</p> <p>20 current system?</p> <p>21 MR. SWEETEN: You're now asking him for his</p> <p>22 qualitative analysis of what was on the record, which</p> <p>23 would require him to reveal his mental impression,</p> <p>24 thoughts that would be subject to the legislative</p> <p>25 privilege so I'm instructing you not to answer on that</p>

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<p>117</p> <p>1 basis.</p> <p>2 BY MS. MARANZANO:</p> <p>3 Q. Was there any factual analysis on the public</p> <p>4 record that compared Senate Bill 362 to the current</p> <p>5 system, in terms of the purported goals of the bill?</p> <p>6 MR. SWEETEN: You can answer based on the</p> <p>7 public record if there was factual analysis.</p> <p>8 A. I don't -- I don't -- I don't understand the</p> <p>9 question. Could you repeat it again?</p> <p>10 Q. (By Ms. Maranzano) Sure. Was there factual</p> <p>11 analysis in the public record about Senate Bill 362, the</p> <p>12 regime that Senate Bill 362 had set up and the current</p> <p>13 system and each of their -- and the goal of</p> <p>14 Senate Bill 362 to prevent in person voter</p> <p>15 impersonation?</p> <p>16 MR. SWEETEN: Objection; compound. Same</p> <p>17 instruction on legislative privilege. You can refer to</p> <p>18 matters of the public record.</p> <p>19 A. I think you can refer to the public record. It</p> <p>20 would reflect that my memory is a little vague, what</p> <p>21 you're asking. But if I understand you correctly, the</p> <p>22 record would reflect those sorts of things, what was</p> <p>23 discussed and what was put in the record as far as</p> <p>24 written testimony, oral testimony, debate between the</p> <p>25 members and those sorts of things would be covered, I</p>	<p>119</p> <p>1 typically, I communicated with quite a bit.</p> <p>2 Q. How many conversations did you have with Senator</p> <p>3 Ellis about Senate Bill 362?</p> <p>4 A. There's no way to tell you how many.</p> <p>5 Q. Do you know when they occurred?</p> <p>6 A. No.</p> <p>7 Q. Can you tell me --</p> <p>8 A. During the process.</p> <p>9 Q. Can you tell me, generally, what the subject</p> <p>10 matter of those conversations were?</p> <p>11 A. No, I really don't recall, generally. I mean,</p> <p>12 Senator Ellis was opposed to the bill and Senator Ellis</p> <p>13 expressed that opinion several times.</p> <p>14 Q. Can you tell me how in conversations you had with</p> <p>15 Senator Lucio about Senate Bill 362?</p> <p>16 A. No.</p> <p>17 Q. Can you tell me when they occurred?</p> <p>18 A. No.</p> <p>19 Q. The general nature of those conversations?</p> <p>20 MR. SWEETEN: Well, you've already asked him</p> <p>21 was it about this bill so I think that is the general</p> <p>22 subject matter.</p> <p>23 MS. MARANZANO: You're not going to let him</p> <p>24 testify to anything more specifically?</p> <p>25 MR. SWEETEN: Well, I'm not going to let him</p>
<p>120</p> <p>1 think, in a very extensive record on this issue.</p> <p>2 Q. (By Ms. Maranzano) And you have no independent</p> <p>3 recollection, as you sit here today?</p> <p>4 A. It would be -- if I have independent recollection</p> <p>5 it would be recollection that would be subject to my</p> <p>6 mental processes and judgment as a legislator. And I</p> <p>7 would not be accurate -- it would be somewhat</p> <p>8 speculative on my part to try to go back three years and</p> <p>9 remember what people said without putting my judgment in</p> <p>10 there as to what it meant. The record is very clear</p> <p>11 about what people said and what the debates were. And</p> <p>12 that's why the record was created. And so that's the</p> <p>13 best evidence, in my view, of what the legislature did</p> <p>14 in 2009.</p> <p>15 Q. Did you have any communications with legislators</p> <p>16 who opposed Senate Bill 362?</p> <p>17 MR. SWEETEN: You can answer.</p> <p>18 A. Yes.</p> <p>19 Q. (By Ms. Maranzano) With whom?</p> <p>20 A. Well, Senator Ellis, Senator Lucio, Senator</p> <p>21 Whitmire, Senator Van de Putte, and probably others.</p> <p>22 Q. How many conversations?</p> <p>23 A. Senator Gallegos.</p> <p>24 Q. Sorry. Anybody else?</p> <p>25 A. You know, probably, but I remember those folks</p>	<p>120</p> <p>1 reveal the substance of the communication. I think he</p> <p>2 said opponents about the bill. That would be a</p> <p>3 privileged log description.</p> <p>4 MS. MARANZANO: That seems extremely general</p> <p>5 to me.</p> <p>6 MR. SWEETEN: Well, what do you</p> <p>7 specifically -- I mean, if you can find a middle ground</p> <p>8 I will work with you Jennifer.</p> <p>9 MS. MARANZANO: It's hard for me to find a</p> <p>10 middle ground when I don't know what the subject matter</p> <p>11 is.</p> <p>12 MR. SWEETEN: Well, if you can recall the</p> <p>13 specific communication she's referring to, I will allow</p> <p>14 you to give a general subject matter description with</p> <p>15 the opponents. Does that satisfy you?</p> <p>16 MS. MARANZANO: It does, thank you.</p> <p>17 A. ID not recall a specific conversation other than</p> <p>18 what -- there are thousands of bills. And as chairman</p> <p>19 of committee, I communicate with members on all of those</p> <p>20 bills. And for me to come and try to reconstruct a</p> <p>21 specific conversation that occurred three years ago</p> <p>22 would be impossible, to accurately construct it. And so</p> <p>23 I can't give you an accurate answer to your question</p> <p>24 without violating the privilege and without going into</p> <p>25 mental processes and opinion.</p>

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<p style="text-align: right;">121</p> <p>1 Q. (By Ms. Maranzano) And would that hold true for 2 each of these members that you've identified? 3 A. I believe it would. 4 Q. Did these members explain to you why they were 5 opposing the bill? 6 MR. SWEETEN: Objection; compound. 7 A. Common sense would tell you that some more than 8 others, yes. 9 MR. SWEETEN: Don't reveal anymore than the 10 general subject matter description why they opposed the 11 bill. You can just answer it. 12 BY MS. MARANZANO: 13 Q. Why do you say some more than others? 14 A. Some were more vocal about their opposition than 15 others. Some sit closer to me on the floor than others 16 too. And some members I'm closer to than others. Just 17 depends on who it is and what's happening on the day. 18 Q. Do you remember if any of them specifically told 19 you why they opposed the bill? 20 MR. SWEETEN: You can answer "yes" or "no" 21 on that question. Don't reveal the communication 22 itself. 23 A. Yes. 24 Q. (By Ms. Maranzano) Which ones? 25 A. I'm sure it would have been Senator Ellis,</p>	<p style="text-align: right;">123</p> <p>1 the impact of Senate Bill 362 on minority voters? 2 A. You would have to refer to the public record. 3 Q. Did the legislature take any steps on the public 4 record to address those concerns? 5 A. The record would reflect that. 6 Q. And you have no independent recollection? 7 A. Not as you have framed the question, no. 8 Q. Well, do you have a different recollection? 9 MR. SWEETEN: Don't provide thought, mental 10 impressions about the bill or discussions that you've 11 had with other legislators in answering the question. 12 A. The only way I can answer the question accurately 13 is to say that there was discussion on the public record 14 about all of these issues. And there was testimony 15 given by experts on all of these issues. And there was 16 testimony given by lay witnesses on all of these issues. 17 And all that is reflected in the record. And my 18 independent recollection of any of that would be 19 inaccurate. But if you refer to the record, the record 20 would be an accurate depiction of what was considered by 21 the committee, debated by the committee and what was 22 before the Committee of the Whole when it made the 23 decision to vote, based on the record. 24 Q. (By Ms. Maranzano) So my question is, do you 25 have a recollection, based on what happened on the</p>
<p style="text-align: right;">122</p> <p>1 Senator Whitmire, Senator Van de Putte, perhaps Senator 2 Lucio. 3 Q. I'm sorry, did you say perhaps? 4 A. Well, not Lucio. It would be those three. 5 Probably those three. Because of the committee and 6 other issues. 7 Q. Did you have communications with outside groups 8 about Senate Bill 362? 9 A. Again, to the extent that they appeared before 10 the committee. But not to any other extent. 11 Q. Did you have communications with the executive 12 branch about Senate Bill 362? 13 A. You know, I don't really recall doing that. If 14 it was, it might have been some staff member on 15 logistics of when. But not on any substantive matter. 16 Q. Did you have conversations with or other 17 communications with locally elected officials on Senate 18 Bill 362? 19 A. To the extent they appeared before the committee 20 and gave public testimony or submitted record -- 21 testimony or evidence in the record, yes. 22 Q. Anything -- any conversations apart from their 23 testimony? 24 A. Not that I recall. 25 Q. Were concerns raised on the public record about</p>	<p style="text-align: right;">124</p> <p>1 public record, about whether the legislature took any 2 steps to address the concerns raised about the impact of 3 Senate Bill 362 on minority voters? 4 MR. SWEETEN: Objection; legislative 5 privilege. You're asking about what steps they took and 6 that's asking for his mental impressions and thoughts 7 and opinions about the legislation that would be subject 8 to the legislative privilege, as phrased. 9 MS. MARANZANO: But steps that they took -- 10 let me clarify. 11 MR. SWEETEN: You're asking him to 12 characterize steps they took in the context of 13 information which is clearly an analysis and process 14 question. 15 MS. MARANZANO: All right. I got you. 16 BY MS. MARANZANO: 17 Q. Let me ask you this. Was there anything stated 18 on the public record that a step was being taken where 19 it was publicly stated that this step was being taken to 20 address concerns about the potential impact of Senate 21 Bill 362 on minority voters? 22 MR. SWEETEN: As narrowed, in referencing 23 the public record, to the extent you can recall, you can 24 answer the question. 25 A. The public record is several thousand page.</p>



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<p>125</p> <p>1 Q. (By Ms. Maranzano) Well, what's your 2 recollection? 3 A. I don't -- I don't have a specific recollection 4 of what was done. I would have to refer to the record. 5 Q. Did you have a role in attempting to secure 6 passage of Senate Bill 362? 7 MR. SWEETEN: Hold on a minute. Object on 8 the basis of legislative privilege. Any role he had to 9 implicate his analysis and thoughts about the bill or 10 communications that he had. To the extent you can refer 11 to matters of the public record, you can answer that 12 question. 13 A. My role was as chairman of the Committee of the 14 Whole, with regard to the process of hearing the bill 15 and presenting it to the members. 16 MR. SWEETEN: Okay. I think we're getting 17 close to a break. That bowl of Captain Crunch I had at 18 5 a.m. is not lasting. So can we get to a point and 19 take a break pretty soon? 20 MS. MARANZANO: Yes. Why don't we just go 21 ahead and do that. 22 MR. SWEETEN: I would like a time check now. 23 Please. 24 MS. MARANZANO: Let's go back on the record. 25 And can we mark this?</p>	<p>127</p> <p>1 extent you remember? 2 A. Well, again as we discussed earlier I don't 3 remember specific things that were said or what I said. 4 But if that's what the record says I said then I'm sure 5 that's what I said. 6 Q. Has anyone ever told you that they're not going 7 to vote because they're worried about somebody voting 8 illegally and cancelling out their vote? 9 MR. SWEETEN: Don't reveal matters of 10 privilege in answering the question. 11 A. Not specifically. 12 Q. (By Ms. Maranzano) Not -- not specifically. Has 13 anybody ever told you generally? 14 A. Well, generally no. I mean, as far as you hear 15 people discussing, the general public about voter ID and 16 what's wrong with voter ID, people may make statements 17 generally about voter confidence. But I can't recall a 18 specific statement anybody said. 19 Q. And what kinds of statements about voter 20 confidence do you recall? 21 MR. SWEETEN: Don't reveal matters that 22 would be subject to the legislative privilege. 23 Communications with the legislative staff, State 24 agencies, Texas Legislative Council. And don't reveal 25 your thoughts or mental impression.</p>
<p>126</p> <p>1 (Exhibit No. 524 was marked.) 2 BY MS. MARANZANO: 3 Q. Before the break we were talking about Senate 4 Bill 362. I'm actually going to go back for a moment to 5 House Bill 218. I'm giving you what we're marking as 6 deposition Exhibit 524. If you could take a look at 7 that and tell me if you recognize it. 8 A. It appears to be a record of the Senate Committee 9 on State Affairs, dated April 30, 2007. House Bill 218 10 is the title. 11 Q. Can you look at the page that's Bates labeled at 12 the bottom -- or actually it's Page No. 54 in the 13 record. 14 A. 54 of the transcript. 15 Q. Of the transcript. And the Bates label is Texas 16 00213319. There's a statement made by you on that page. 17 Do you see that? 18 A. Does that appear at line 14. 19 Q. Line 14, exactly. And if you can look down a few 20 lines from that there's a sentence that says, "One thing 21 I think, Senator Fraser laid out a good argument in the 22 beginning and he says that, 'Well, if one voter votes 23 illegally or fraudulently, cancels out the vote of a 24 person who voted legally.'" Does that seem like an 25 accurate representation of something you said, to the</p>	<p>128</p> <p>1 A. Just generally, what you would read in the 2 newspaper or what you would hear on the radio talk show 3 or what you would hear on a general discussion of the 4 people at meetings and things like that about, 5 generally, voter confidence, voter ID and that sort of 6 thing. 7 Q. Okay. And I'm just trying to understand, what do 8 you mean by "voter confidence and voter ID." What have 9 you heard in those forums that you just listed about the 10 connection between voter confidence and voter ID? 11 A. Generally, what I would recall is that there is a 12 frustration while somebody should not be allowed -- 13 should not be required to show and ID to vote when 14 they're shown an ID to do a lot of other things that we 15 all do in this society in this day an age. 16 Q. Have you also heard that, in those same forums, 17 that some of those things we have to show ID for are not 18 legal rights? 19 MR. SWEETEN: You can answer. Don't reveal 20 your mental thoughts and impressions and don't reveal 21 the communications that would be subject to the 22 legislative privilege. You can refer to matters in the 23 public record, which I think you have. 24 A. I don't recall anything specific as to what you 25 described.</p>



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<p>129</p> <p>1 Q. (By Ms. Maranzano) Is there any reason based on 2 the various public records that you're familiar with 3 from sitting through COMMITTEE hearings and Senate floor 4 hearings and debates on various voter identification 5 bills and other election bills, based on all of that, is 6 there any reason to believe that voters do not have 7 confidence in the system?</p> <p>8 MR. SWEETEN: That asks him to reveal his 9 mental impressions or thoughts, so don't answer the 10 question as posed. It's subject to the legislative 11 privilege.</p> <p>12 BY MS. MARANZANO:</p> <p>13 Q. Can you look at the -- in that same statement 14 there's -- the first sentence says, "number one target 15 of priority on my agenda." Would you say that that was 16 a consistent position you had throughout the additional 17 debates on voter identification that took place in 2009 18 and 2011?</p> <p>19 MR. SWEETEN: As phrased, the question asks 20 for you to reveal matters of legislative privilege, 21 whether it was a consistent position of you. You can 22 refer to matters in the public record, but don't answer 23 to the extent it requests information that's subject to 24 the legislative privilege.</p> <p>25 A. I would just simply refer to the statements made</p>	<p>131</p> <p>1 reason to believe, based on the public record, that 2 criminal penalties are not sufficient to deter 3 fraudulent votes?</p> <p>4 MR. SWEETEN: Don't answer that. She's 5 asking for your qualitative judgment about whether or 6 not criminal penalties are sufficient. That would 7 require you to reveal your mental impressions, thoughts 8 and motivations regarding legislation. My instruction 9 is do not answer the question.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. Was there any public testimony or discussion 12 about whether criminal penalties would be sufficient to 13 deter fraudulent votes?</p> <p>14 MR. SWEETEN: You can answer to the extent 15 that it appears on the public record.</p> <p>16 A. You would have to refer to the public record. I 17 don't are specific recollection.</p> <p>18 Q. (By Ms. Maranzano) You don't have specific 19 recollection, independently?</p> <p>20 A. Well, not independently. It may or may not have. 21 I would just to refer you to the record.</p> <p>22 Q. Do you see that first part that says, "I'm not 23 sure how I understand that is so oppressive." 24 Presumably you can look at the paragraph above to give 25 some context. Is that talking about the voter ID</p>
<p>130</p> <p>1 in the public record.</p> <p>2 Q. (By Ms. Maranzano) Did it become a priority on 3 your agenda in 2009 or 2011, if that is something that 4 would have been public?</p> <p>5 MR. SWEETEN: You can answer if it has to do 6 with something you said on the public record. However, 7 do not answer if it became a priority for you or a 8 matter that would be subject to the legislative 9 privilege, including your mental thoughts and 10 impressions.</p> <p>11 A. I don't know if I've made a statement to -- I 12 don't recall whether I made a statement one way or the 13 other with regard to that being a priority of my office 14 or my -- or me, as a policy issue in -- in subsequent 15 days or periods after April 30, 2007, which is the date 16 of this statement.</p> <p>17 Q. (By Ms. Maranzano) Can you look at the next 18 page. It's a continuation of that same statement from 19 you in the two paragraphs below the paragraph that we 20 were looking at there's a statement that says, "And I'm 21 not sure how I understand that -- how that is so 22 oppressive as opposed to the part -- as opposed to the 23 scenario of when someone votes fraudulently a legal vote 24 is cancelled and that seems to me to be an overriding 25 policy principal in this whole issue." Is there any</p>	<p>132</p> <p>1 requirement?</p> <p>2 MR. SWEETEN: You can refer to the public 3 record itself when answering the question.</p> <p>4 A. Well, I'm not sure I really understand the 5 question.</p> <p>6 Q. (By Ms. Maranzano) I wanted to ask you a 7 question about this phrase, but since it's sort of taken 8 out of context as it is, I was just saying you could 9 look at the statements ahead of it and the paragraph 10 preceding. And is it your understanding that when you 11 say, "I'm not sure how that is so oppressive," what is 12 that in that sentence, just so that we have a clear 13 record. Is that talking about the voter identification 14 requirement?</p> <p>15 MR. SWEETEN: You're asking him to interpret 16 what that meant, which is in the public record. And in 17 providing an interpretation of that you're asking him to 18 reveal his thoughts, mental impressions. You can refer 19 to matters in public record.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. Can you just look at the full statement which 22 starts on Page 54 and continues on to Page 55? I'm just 23 asking for the context of that statement.</p> <p>24 A. It's a legislative debate that's on the public 25 record. So I will invoke the legislative privilege on</p>



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<p style="text-align: right;">133</p> <p>1 that. This statement is what it is. It is a statement 2 that basically is a form of public debate on the issue. 3 So that's what I recall. And that is how I can answer 4 that. 5 Q. Okay. You're not able to provide any additional 6 answer as to what you meant -- what the word that refers 7 to? I mean I was just actually just asking for the 8 context? 9 A. You know, I don't remember making -- this is the 10 record -- I don't recall this specific conversation. 11 I'm not denying that it occurred. I'm just saying I 12 don't recall the conversation. So I actually 13 don't understand -- can't -- or don't recall -- I cannot 14 accurately answer what context that's in. 15 Q. So would it be oppressive if a person was unable 16 to afford an identification and couldn't vote, would 17 that system be oppressive? 18 MR. SWEETEN: Objection. Don't answer. 19 Calls for matters subject to the legislative privilege. 20 BY MS. MARANZANO: 21 Q. Can you look at the next page for me, on Page 57 22 of the public record, the public hearing. And at the 23 bottom of that page do you see there's a quote by you? 24 A. Well, I have testimony beginning on line 14. 25 Q. Yes. Can you look at where that -- can you look</p>	<p style="text-align: right;">135</p> <p>1 here today? 2 A. Not in the record. Are you talking just about 3 this Senate Committee public hearing or are you talking 4 about 218, generally? 5 Q. I'm talking about the public record, generally? 6 A. Okay. 7 Q. Does that change your answer at all? 8 A. No. 9 Q. Okay. Can you look at Page 99 of the transcript, 10 the Bates label is Texas 00213364. And there's an 11 exchange -- I'm sorry. Do you see there's an exchange 12 at the bottom of the page between Senator Van de Putte 13 and Ms. McGeehan. Can you identify for the record who 14 Ms. McGeehan is? 15 A. I believe that would be referring to Ann McGeehan 16 who was an employee of the Secretary of State's office. 17 I'm think in the election division. 18 Q. Was she the director of elections? 19 A. I think that was generally her title. It I'm not 20 sure specifically what her title was. 21 Q. Do you see on line 22, Senator Van de Putte 22 asked, "About how many complaints have you about had 23 voter impersonation?" And Ms. McGahan responds on line 24 24, "We have not had any." 25 A. I see that.</p>
<p style="text-align: right;">134</p> <p>1 at the testimony that's at line 24 and 25 and the top of 2 the one on the next page. Do you see that it says, "So 3 what this is, this is the least restrictive more to be 4 able to verify voters. It seems to me." Based on the 5 public record, do you think House Bill 218 is the least 6 restrictive means to verify voters? 7 MR. SWEETEN: Objection. Don't answer the 8 question. It calls for matters of legislative 9 privilege, including your mental impressions, thoughts, 10 motivations about bills. 11 BY MS. MARANZANO: 12 Q. Was there discussion on the public record about 13 whether House Bill 218 was the least restrictive means 14 to verify voters? 15 MR. SWEETEN: You can answer the question. 16 A. It appears that there was discussion and debate 17 about that and the record will speak for that. 18 Q. (By Ms. Maranzano) Was there any discussion on 19 the public record about whether House Bill 218 would 20 continue to be the least restrictive means to verify 21 voters if some of the forms of identification in the 22 bill were removed from it? 23 A. If there was such a discussion of that it would 24 be in the record. 25 Q. Do you have any recollection of that, as you sit</p>	<p style="text-align: right;">136</p> <p>1 Q. Do you recall that exchange? 2 A. Not specifically. But I recall it from reviewing 3 the record here. 4 Q. Do you recall at any point publicly getting an 5 update on that information sometime between when this 6 happened and the 2011 legislative session? 7 MR. SWEETEN: You can refer to matters in 8 the public record. 9 A. I don't recall if we did or not. If we did it's 10 reflected either in -- or it should be reflected in the 11 committee records post April 30, 2007. 12 Q. Would that information, if it was publicly made 13 available, have gone to the State Affairs Committee? 14 MR. SWEETEN: Objection. Calls for 15 speculation. Also don't reveal your mental processes or 16 communications. 17 A. It could have gone to the State Affairs 18 Committee. It could have gone to members generally. 19 Sometimes post-hearing or once a bill is out of the 20 COMMITTEE people will disseminate things. I don't know. 21 But I can't tell you outside the record whether the 22 committee followed up or did anymore in that session on 23 that question. 24 Q. (By Ms. Maranzano) Okay. We can put this aside. 25 Before the break we had started talking about Senate</p>



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<p style="text-align: right;">137</p> <p>1 Bill 362. Do you recall that?</p> <p>2 MS. MARANZANO: Can we have this marked.</p> <p>3 (Exhibit No. 525 was marked.)</p> <p>4 BY MS. MARANZANO:</p> <p>5 Q. Senator, I'm showing you what we're marking for</p> <p>6 the record as deposition Exhibit 525. It does not have</p> <p>7 a cover page on this, but do you recognize that this</p> <p>8 looks to be an excerpt from the Senate rules?</p> <p>9 MR. SWEETEN: Is this '09 or '11, did you</p> <p>10 say.</p> <p>11 MS. MARANZANO: This is '09.</p> <p>12 MR. SWEETEN: '09, okay.</p> <p>13 A. Is your question does this appear to be?</p> <p>14 Q. (By Ms. Maranzano) An excerpt from the Senate</p> <p>15 rules?</p> <p>16 A. I assume that it is.</p> <p>17 Q. Do you recall -- do you recall having a debate on</p> <p>18 the rules resolution in 2009 in the Senate?</p> <p>19 A. I do recall there was a debate on this.</p> <p>20 Q. And can you direct your attention to Section D of</p> <p>21 Rule 5.11?</p> <p>22 A. Yes, ma'am.</p> <p>23 Q. Do you see that there's a provision explicitly</p> <p>24 for voter identification requirements in Section D of</p> <p>25 Rule 5.11?</p>	<p style="text-align: right;">139</p> <p>1 the purpose of subsection D?</p> <p>2 A. The purpose of that subsection is to provide for</p> <p>3 consideration of voter identification or a bill of</p> <p>4 resolution relating to voter identification requirements</p> <p>5 by a Committee of the Whole in setting the time limit.</p> <p>6 Q. And so -- I'm sorry. Were you done?</p> <p>7 A. I think so.</p> <p>8 Q. Do you see that that also allows for a vote by</p> <p>9 the majority of the members of the Senate?</p> <p>10 A. That's correct.</p> <p>11 Q. And so that -- was this in the 2007 Senate rules?</p> <p>12 A. I think this rule was either added or amended in</p> <p>13 2009.</p> <p>14 Q. So you believe it was or was not in the 2007</p> <p>15 rules?</p> <p>16 A. Not as 5.11. I don't know what was -- if there</p> <p>17 was a version of special order bill that was amended by</p> <p>18 the Senate on -- in January of 2009.</p> <p>19 Q. Okay. But I'm asking specifically about</p> <p>20 Subsection D?</p> <p>21 MR. SWEETEN: You're asking was D in the</p> <p>22 2007 Senate rules.</p> <p>23 MS. MARANZANO: Yeah.</p> <p>24 MR. SWEETEN: You can answer.</p> <p>25 A. I don't think so.</p>
<p style="text-align: right;">138</p> <p>1 A. Uh-huh. Yes, ma'am.</p> <p>2 Q. Can you tell me what the circumstances were for</p> <p>3 adopting that rule, that section of the rules?</p> <p>4 MR. SWEETEN: Done reveal -- don't answer</p> <p>5 the question as phrased. It will require you to reveal</p> <p>6 matters subject to legislative privilege. You can</p> <p>7 answer as to the general purpose of Rule 5.11. I will</p> <p>8 let him do that.</p> <p>9 BY MS. MARANZANO:</p> <p>10 Q. Why don't you tell me about the general purpose</p> <p>11 of Rule 5.11?</p> <p>12 A. Well, as I understand the general purpose of Rule</p> <p>13 5.11 was to be able to take up consider -- a bill of</p> <p>14 resolution relating to voter identification</p> <p>15 requirements, within the confines of this rule. And it</p> <p>16 sets up the process and procedure of doing that.</p> <p>17 Q. And what was the purpose for making this special</p> <p>18 carve-out for voter identification requirements?</p> <p>19 MR. SWEETEN: You can testify to the purpose</p> <p>20 of rule 5.11 generally.</p> <p>21 A. Well, generally, the purpose is to allow a bill</p> <p>22 to be brought up as a special order as opposed to the</p> <p>23 regular order of business.</p> <p>24 Q. (By Ms. Maranzano) So what I'm directing your</p> <p>25 attention to is the Subsection D of that rule. What was</p>	<p style="text-align: right;">140</p> <p>1 Q. (By Ms. Maranzano) Okay. How about the 2005</p> <p>2 Senate rules?</p> <p>3 A. I don't believe it was.</p> <p>4 Q. Are you aware of any other times when there has</p> <p>5 been a carve-out for one particular type of legislation</p> <p>6 written into the Senate rules?</p> <p>7 MR. SWEETEN: You're talking about in -- in</p> <p>8 the context of the 5.11. Because I think the question</p> <p>9 could be very broad. I just want to make sure I</p> <p>10 understand.</p> <p>11 BY MS. MARANZANO:</p> <p>12 Q. Okay. Why don't we focus on 5.11. Was there any</p> <p>13 other time that you're aware of when there has been an</p> <p>14 exception written into the rules for Rule 5.11 about one</p> <p>15 particular type of legislation?</p> <p>16 A. Not that I recall. Not that I know of.</p> <p>17 Q. Did Senate Bill 362 pass by more than two-thirds</p> <p>18 a majority vote?</p> <p>19 A. I think the record would reflect it passed by a</p> <p>20 majority, but not a two-thirds majority.</p> <p>21 Q. Did you have any communication -- well, let me</p> <p>22 ask you this. Did Senator Williams introduce the</p> <p>23 resolution to the Senate rules resolution in 2009?</p> <p>24 A. I believe Senator Williams was the primary author</p> <p>25 of the rule, of the proposed rule, yes.</p>



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<p>141</p> <p>1 Q. Did you have communications with Senator Williams?</p> <p>2 A. Yes.</p> <p>3 Q. About the proposed rules?</p> <p>4 A. Yes.</p> <p>5 Q. How many?</p> <p>6 A. I don't know. Not many.</p> <p>7 Q. Prior to his introduction of the resolution?</p> <p>8 A. Yes, prior.</p> <p>9 Q. Can you give me an approximate number?</p> <p>10 A. Not really. I mean it was -- I really can't. It would be an approximate guess, so I hate to guess. We had more than one.</p> <p>11 Q. More than five?</p> <p>12 A. Probably.</p> <p>13 Q. And they were all prior to the introduction of the resolution?</p> <p>14 A. No. Well, I don't know. Prior to passage. I'll qualify it that way.</p> <p>15 Q. When did you learn that Senator Williams was going to introduce the rules resolution that included this Subsection D for Rule 5.11?</p> <p>16 A. Sometime in January of 2009.</p> <p>17 Q. Did any other Senate rules get changed from the consideration of voter identification requirements in</p>	<p>143</p> <p>1 A. Yes. Yes.</p> <p>2 Q. Did you have any communications with anybody about changing other rules in 2009 for the consideration of voter identification requirements, other rules other than the 5.11?</p> <p>3 A. I don't think so.</p> <p>4 Q. And other than Senator Williams, did you have any communications about Subsection D of 5.11 with anybody in 2009?</p> <p>5 A. I had conversations with several members of the Senate over that. During the debate on the floor, during the few days before when it was proposed and voted on. Just part of what we do in the Senate is there are discussions formal and informal. Formal would be on the record, informal would be discussions that would be had on the Senate floor.</p> <p>6 Q. Who did you have informal communications with?</p> <p>7 A. I would assume members of the -- different members.</p> <p>8 Q. Can you give me their names?</p> <p>9 A. Well, Senator Lucio, Senator Ellis, Senator Van de Putte, Senator Whitmire, probably Senator Fraser, probably Senator Williams, probably Senator Ogden. Probably Carona, Senator Eltife perhaps. Those are just specific people that are coming to my mind that I would</p>
<p>142</p> <p>1 2009?</p> <p>2 MR. SWEETEN: Could you read the question back, please, madam court reporter.</p> <p>3 (Requested question was read.)</p> <p>4 MS. MARANZANO: And I think what I intended to say was for the identification of voter identification requirements.</p> <p>5 A. Would you just rephrase it?</p> <p>6 Q. (By Ms. Maranzano) Were any other Senate rules changed in 2009 solely for -- as is written in 5.11-D, solely for a bill or resolution related to voter identification requirements?</p> <p>7 A. I don't know if there were any conforming rules or anything that were changed as a result of this. I do not know the answer to this question.</p> <p>8 Q. Other than conforming rules, did anything change?</p> <p>9 A. I don't think so. But again, I don't know for sure. I don't recall that there were. I don't think there were.</p> <p>10 Q. Did you take a public position on the rules resolution that Senator Williams introduced?</p> <p>11 A. What do you mean?</p> <p>12 Q. Presumably, you voted on it, right?</p> <p>13 A. I voted for it.</p> <p>14 Q. You voted for it?</p>	<p>144</p> <p>1 have had a discussion on the Senate floor about this particular rule.</p> <p>2 Q. Do you remember conversations with them or you're just saying if you --</p> <p>3 A. I don't remember the context of generally what members of the legislative body do in discussing an issue.</p> <p>4 Q. And am I correct that some of the members you listed voted against the rules resolution?</p> <p>5 A. That's correct.</p> <p>6 Q. Were you conversations -- did your conversations with them include -- include discussing the reasons why they were voting against the rules resolution?</p> <p>7 MR. SWEETEN: Don't discuss the specific conversations. But if you want to -- I think as phrased I'm going to let you answer it.</p> <p>8 A. Members discuss their mental processes and thoughts about bills on the Senate floor all the time that may not be on the record. In other words, it's -- as opposed to a formal debate where somebody is holding a mic and debating formally or whether somebody is working on a bill and debating the bill on the Senate floor informally without a debate. It is part of the mental process sharing of legislators that occurs. And that would be the type of communication that we were</p>



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June 7, 2012

<p style="text-align: right;">145</p> <p>1 having.</p> <p>2 Q. (By Ms. Maranzano) So my question was about</p> <p>3 whether they expressed why they were opposed to the</p> <p>4 bill's resolution.</p> <p>5 A. I'm sure those that did expressed or gave reasons</p> <p>6 as to why they were opposed.</p> <p>7 Q. Do you recall if Senator Carona gave you reasons</p> <p>8 about why he was opposed to the rules resolution?</p> <p>9 A. Yes.</p> <p>10 Q. How many conversations did you have with him?</p> <p>11 A. Two or three.</p> <p>12 Q. Were all of these conversations that you've</p> <p>13 referred to, and for the purposes of this question I'm</p> <p>14 including more than just Senator Carona, were they all</p> <p>15 verbal?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have any written communications?</p> <p>18 A. No.</p> <p>19 Q. Did Senate Bill 362 go to any Senate committees?</p> <p>20 THE REPORTER: Go what?</p> <p>21 MS. MARANZANO: Was it referred to any</p> <p>22 Senate committees?</p> <p>23 A. I don't believe it was, other than the Committee</p> <p>24 of the Whole. I don't believe it went to a specific</p> <p>25 standing committee.</p>	<p style="text-align: right;">147</p> <p>1 A. I can't tell you. Five or more.</p> <p>2 Q. And when were those?</p> <p>3 A. From the point of -- it would after the rule was</p> <p>4 adopted and from the time we had the hearing.</p> <p>5 Q. I'm sorry. The time that the Committee of the</p> <p>6 Whole held the hearing?</p> <p>7 A. Right. Right.</p> <p>8 Q. It was after the rule was adopted you said?</p> <p>9 A. Yes. I may have had some conversations before,</p> <p>10 generally. I just don't recall.</p> <p>11 Q. What was the purpose of referring the bill</p> <p>12 directly to the Committee of the Whole?</p> <p>13 MR. SWEETEN: Yeah. Don't answer that</p> <p>14 question. That calls for matters that are your mental</p> <p>15 impressions, thoughts, opinions about legislation,</p> <p>16 motivations, so don't answer the question.</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. Were there any conversations on the public record</p> <p>19 about the referral of this bill straight to the</p> <p>20 Committee of the Whole?</p> <p>21 MR. SWEETEN: You can answer the question as</p> <p>22 phrased.</p> <p>23 A. If they there were they're on the record. I</p> <p>24 assume there may have been discussions about that during</p> <p>25 the debate on Rule 5.11.</p>
<p style="text-align: right;">146</p> <p>1 Q. (By Ms. Maranzano) Is that the -- is that</p> <p>2 unusual?</p> <p>3 MR. SWEETEN: You can answer as the general</p> <p>4 Senate procedure.</p> <p>5 A. That was the procedure that was established by</p> <p>6 Rule 5.11.</p> <p>7 Q. (By Ms. Maranzano) Rule 5.11 established that it</p> <p>8 would go straight to the Committee of the Whole?</p> <p>9 A. I believe that's what it says. I'll look at it.</p> <p>10 I believe that the Senate Rule 5.11 contemplates the</p> <p>11 bill being referred to by the Senate of the whole.</p> <p>12 Q. Would this bill, had it not been referred to the</p> <p>13 Committee of the Whole, been referred to the State</p> <p>14 Affairs Committee? The bill I'm referring to is Senate</p> <p>15 Bill 362.</p> <p>16 MR. SWEETEN: Hold on a minute. Calls for</p> <p>17 speculation and calls for him to reveal his thoughts,</p> <p>18 mental impressions about legislation. So I'm going to</p> <p>19 instruct you not to answer based on that.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. Did you have any communications with the</p> <p>22 Lieutenant Governor about the referral of Senate Bill</p> <p>23 362 straight to the Committee of the Whole?</p> <p>24 A. Yes.</p> <p>25 Q. How many?</p>	<p style="text-align: right;">148</p> <p>1 Q. (By Ms. Maranzano) Do you recall any members</p> <p>2 expressing concern that this bill was trying to be moved</p> <p>3 along extremely quickly?</p> <p>4 MR. SWEETEN: You can refer to matters of</p> <p>5 the public record. Don't reveal matters of legislative</p> <p>6 privilege.</p> <p>7 A. I don't know for sure. I don't recall -- have</p> <p>8 independent recall. That would be reflected in the</p> <p>9 record. It's not unusual for that to occur.</p> <p>10 Q. (By Ms. Maranzano) I'm sorry. For what to --</p> <p>11 what's not unusual?</p> <p>12 A. For someone to complain that the bill is moving</p> <p>13 too quickly.</p> <p>14 Q. I see. Based on the public record would you say</p> <p>15 Senate Bill 362 moved fairly quickly through the</p> <p>16 legislature compared to other bills?</p> <p>17 A. No.</p> <p>18 Q. Did you have less of an ability to shape Senate</p> <p>19 Bill 362 since it went straight to the Committee of the</p> <p>20 Whole and not to State affairs?</p> <p>21 MR. SWEETEN: Objection; calls for</p> <p>22 legislative privilege. Your qualitative judgment about</p> <p>23 one committee process as opposed to another. That's a</p> <p>24 matter of legislative privilege. Instruct you not to</p> <p>25 answer.</p>



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<p>1 MS. MARANZANO: Can we get these two 2 exhibits mark? 3 (Exhibit No. 526-527 was marked.) 4 BY MS. MARANZANO: 5 Q. Do you recognize these? 6 A. I believe so. 7 Q. What are these? 8 A. Well, Exhibit 526 is a letter from Senator Van de 9 Putte to me dated March 3, 2009. Opening a written 10 dialogue concerning the Committee of the Whole hearing 11 and ground rules. And the -- and 527 is a letter that I 12 wrote responding to her concerns dated March 5, 2009. 13 Q. And can you look at -- do you recall having this 14 exchange with Senator Van de Putte? 15 A. I recall that we wrote letters back and forth and 16 also had conversations seeking conversations about these 17 issues. 18 Q. Can you look at your response for me? 19 A. Yes, ma'am. 20 Q. And can you look at No. 1, the first sentence 21 says, "I am not inclined to support further delay in 22 consideration of voter identification legislation." Can 23 you tell me, based on the public record, had there been 24 a delay in the consideration of voter identification 25 legislation?</p>	<p>1 MR. SWEETEN: Again, don't refer to the 2 document itself or interpret the words on the page. If 3 you -- you can answer as a general matter about Senate 4 procedure matters of the public record. 5 A. Generally a week would be longer than normal 6 bills would -- notice on most bills. 7 Q. (By Ms. Maranzano) Are there some bills that you 8 give a longer amount of notice time for? 9 MR. SWEETEN: You can refer to matters of 10 the public record. 11 A. Generally, no. We generally -- we generally set 12 a hearing docket and post it within the required time 13 limits. Just depends on when it gets down to the 14 Senate. 15 Q. (By Ms. Maranzano) Is there any consideration of 16 whether there's significant public interest on a bill? 17 MR. SWEETEN: Yeah. Don't reveal that. 18 That would require you to reveal matters that are 19 privileged and instruct you not to answer. 20 BY MS. MARANZANO: 21 Q. Can you look at that paragraph below the one we 22 were just looking at? There's a sentence that says, 23 "Additionally, that committee heard extensive testimony 24 last session on a substantially similar voter election 25 bill. Texas Senate almost spent nearly an entire day on</p>
<p>1 MR. SWEETEN: Yeah. Don't answer the 2 question. It calls for you to interpret what you said 3 there. Legislative privilege. You can answer as to 4 whether you said that. 5 A. That's a statement I wrote. But that's as much 6 as I can testify to. 7 Q. (By Ms. Maranzano) Okay. Can you -- can you 8 look down in that same paragraph where there's a 9 sentence that says, "More than a week's notice of a 10 hearing is much more than the Senate usually provides," 11 what amount of notice does the Senate usually provide? 12 MR. SWEETEN: You can answer as a general 13 matter, but I don't want you to interpret statements on 14 this. 15 A. The rules of the Senate provide posting notices 16 and I believe, you can go with the rules, but I think 17 it's 24 hours or 48 hours to the tag and there's certain 18 periods of times it changes depending on the time of the 19 session. So the rules of the Senate would be the time 20 limits that committees are required to provide for 21 hearings. And I would just refer you to those rules 22 that were in effect. 23 Q. (By Ms. Maranzano) And is it -- is it your 24 testimony that more than a week's notice would be much 25 more than what the Senate would usually provide?</p>	<p>1 the Senate floor discussing the importance of this 2 issue." Does that sentence refer to the debate that 3 occurred on the rules resolution? 4 MR. SWEETEN: Don't interpret the sentence 5 on the page. You can answer -- I mean, I don't know 6 that you can answer that. I think that's legislative 7 privilege. 8 MS. MARANZANO: So what he meant in this 9 letter -- 10 MR. SWEETEN: He's not going to interpret 11 what he meant when he said it. That's legislatively 12 privileged. He can answer questions about the public 13 record, but he's not going to interpret the letter. That 14 would reveal his thoughts, mental impressions about a 15 bill in legislation. 16 MS. MARANZANO: I'm not sure I see that as 17 interpretation, but more just as what event he was 18 referring to. But in the interest of -- 19 MR. SWEETEN: Well, I mean, as the court has 20 said, you can ask him about a public statement, he made 21 it, he didn't make it. The court has not said that you 22 can -- that you can go behind that and ask for reasons, 23 support or information or thought processes behind that 24 statement. In fact, they've said the contrary. And so 25 I'm drawing that line. I think that is an absolutely</p>



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<p style="text-align: right;">153</p> <p>1 correct interpretation of the court's decision on this 2 matter. That's why I'm not going to allow him to give 3 additional information about this statement or what he's 4 expressed. 5 BY MS. MARANZANO: 6 Q. Well, let me ask you this, Senator. That 7 sentence refers to there being discussion about the 8 importance of this issue. Was the substance of 9 legislation discussed during that discussion, which 10 appears to me is a discussion that happened on the 11 public record? 12 A. Well, let me answer it this way. I don't know of 13 any other hearing we had on the public record on the 14 Senate for a day other than the hearing on the rule. 15 Q. And was the substance of Senate Bill -- 16 A. There may have been, but I don't recall. 17 Q. There may have been what? 18 A. There may have been other -- I don't recall any 19 other hearing before the Senate that lasted more than a 20 day, other than the one on Rule 5.11. 21 Q. And was the substance of Senate Bill 362 22 discussed in that debate? 23 A. The record will clearly reflect what issues were 24 discussed. 25 Q. And what's your recollection, as you sit here</p>	<p style="text-align: right;">155</p> <p>1 is that the office of Attorney General would not testify 2 because should there be litigation that would present a 3 conflict of sorts? 4 A. Well, I think you just have to read it. 5 Q. Well, how would you describe it for me? 6 A. As I wrote it. 7 Q. Which says, "Given fact that the office of the 8 Attorney General will represent the State of Texas in 9 litigation if any arising out of this legislation, it 10 would be inappropriate to present the Attorney General 11 as a witness in the legislative debate." Did that 12 position change in any of the legislative debates. And 13 that's -- that's a public record. Did the office of 14 Attorney General testify in the 2011 legislative session 15 on voter identification vote? 16 MR. SWEETEN: That second question, if the 17 AG testified, I'm fine with. The first one, whether his 18 position changed, I think we -- 19 BY MS. MARANZANO: 20 Q. Okay. Let's go with the second one. 21 MR. SWEETEN: Because you amended the 22 question. 23 A. So to make sure I'm clear, would you restate it? 24 Q. (By Ms. Maranzano) Yeah. Did the office of the 25 Attorney General testify during the debate on SB 14?</p>
<p style="text-align: right;">154</p> <p>1 today? 2 A. My recollection is, we talked about the issues of 3 voter identification and the issues of the special order 4 rule. But the record -- you would have to check the 5 record to get a better recollection or better reflection 6 of what was discussed. There were a lot of things 7 discussed that day. 8 Q. So your recollection is you talked about voter 9 identification and you don't recall whether or not -- 10 A. I don't recall specifics independently. The 11 record will reflect that. That was a long day for me. 12 I had a personal tragedy. 13 Q. I'm sorry. Can you look at the next page for me? 14 By the -- 15 A. The next -- my letter of March -- 16 Q. Exactly. By paragraph 5. Can you read that? 17 A. Read it? 18 Q. Just take a look at it. 19 A. Yes. 20 Q. Is that about whether the office of the Attorney 21 General would be available to testify in a legislative 22 proceeding? 23 A. That's correct. 24 Q. Are you aware of whether this position -- am I 25 correct that what 5 -- what that paragraph is asserting</p>	<p style="text-align: right;">156</p> <p>1 A. There were staff persons from the office of the 2 Attorney General who testified on -- in the public 3 hearing on Senate Bill 362. 4 Q. On 362? 5 A. Or whatever it was. 6 Q. Senate Bill 14? 7 A. Yeah, I think on 14 as well. 8 Q. Okay. And you think they testified in 2009? 9 A. I think so. 10 Q. As well? 11 A. Yeah. 12 Q. Okay. 13 A. I'm sorry. I thought we were on -- 14 Q. We were, but -- 15 A. You've got to be clear with me on what you were 16 talking about. 17 Q. I'm sorry. 18 A. It will help me a lot. 19 MR. SWEETEN: Jennifer, I need to take a 20 2-minute break. 21 (Brief recess.) 22 MS. MARANZANO: Before we actually go back 23 into the substantive discussion we were having, I wanted 24 to raise an issue with Mr. Sweeten, on the record, about 25 documents that we believe should have been produced</p>



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<p>157</p> <p>1 yesterday pursuant to the court's order related to --</p> <p>2 this is from Page 15 of the June 5th order. The court</p> <p>3 ordered that y'all produce a constituent lobbyist and</p> <p>4 interest groups communication on legislative responses.</p> <p>5 And we believe that the privilege log asserts that there</p> <p>6 were some constituent communications with Senator</p> <p>7 Duncan's office that have not been produced. So I can</p> <p>8 give you the specific Bates ranges.</p> <p>9 MR. SWEETEN: Do you want to -- looks like</p> <p>10 you've got them all written down.</p> <p>11 MS. MARANZANO: I do.</p> <p>12 MR. SWEETEN: Do you want to --</p> <p>13 MS. MARANZANO: Why don't I read it into the</p> <p>14 record and then I can send you an e-mail follow-up.</p> <p>15 MR. SWEETEN: Yeah. That would be helpful.</p> <p>16 MS. MARANZANO: Okay.</p> <p>17 MR. SWEETEN: Let me just say that, in</p> <p>18 response, that I know that we've obviously -- were in</p> <p>19 receipt of the court order. We obviously responded.</p> <p>20 And I would think you would agree that we sent,</p> <p>21 certainly over 1,000 constituent -- or documents fitting</p> <p>22 that description yesterday. You've been advised --</p> <p>23 MS. MARANZANO: I can't represent the</p> <p>24 number. I understand that constituent communications</p> <p>25 were produced.</p>	<p>159</p> <p>1 look into your suggestion. But again, I think we fully</p> <p>2 complied yesterday. But we'll check that. We'll check</p> <p>3 what you're suggesting.</p> <p>4 MS. MARANZANO: To be clear, we're looking</p> <p>5 at the privilege log from May 21st and I believe these</p> <p>6 documents are explicitly listed as constituent</p> <p>7 communications.</p> <p>8 BY MS. MARANZANO:</p> <p>9 Q. Okay. Senator, we were talking about Senate Bill</p> <p>10 362 before the break. Can you tell me what your role</p> <p>11 was during the consideration of Senate Bill 362 when it</p> <p>12 went before the Committee of the Whole?</p> <p>13 MR. SWEETEN: You can refer to your</p> <p>14 public -- matters of public record.</p> <p>15 A. I was appointed to be the chairman of the</p> <p>16 Committee of the Whole.</p> <p>17 Q. (By Ms. Maranzano) And what are your</p> <p>18 responsibility when you're chair of the Committee of the</p> <p>19 Whole?</p> <p>20 A. To conduct the hearing.</p> <p>21 Q. And can you describe to me what that means?</p> <p>22 A. Well, it means setting the parameters for the</p> <p>23 ground -- the parameters and the ground rules for</p> <p>24 hearing witnesses and organizing the committee so that</p> <p>25 it moves in an orderly fashion. So that -- to work with</p>
<p>158</p> <p>1 MR. SWEETEN: So you were given -- let's say</p> <p>2 this. You were given a substantial number of</p> <p>3 constituent communications. If you're suggesting that</p> <p>4 you don't think you got some of Senator Duncan's, then</p> <p>5 all I can do in response to that is to look. And we</p> <p>6 believe that we've been in full compliance with the</p> <p>7 court's order. But I will certainly look at your list</p> <p>8 and we'll double-check.</p> <p>9 MS. MARANZANO: Right. And, I mean, that's</p> <p>10 what I'm asking. And I think -- because our</p> <p>11 understanding is we don't have these documents, I am</p> <p>12 going to need to hold the deposition open. But, you</p> <p>13 know, we will --</p> <p>14 MR. SWEETEN: If at the next break I can</p> <p>15 potentially make a phone call and check to see.</p> <p>16 MS. MARANZANO: So let me just read for the</p> <p>17 record that the Bates numbers are Texas 00203510, Texas</p> <p>18 0020354 -- 3524 through 3527, Texas 00203528 through</p> <p>19 3529, Texas 00203532, Texas 00203533 through 3539.</p> <p>20 Texas 00203540 through 3541. Texas 00203542 through</p> <p>21 00203544. Texas 00204706. Texas 00204707 through 4710.</p> <p>22 So those are the ones we're missing. And I can send you</p> <p>23 e-mail communication following up.</p> <p>24 MR. SWEETEN: That actually would be helpful</p> <p>25 so we can have them all written down and we'll -- I'll</p>	<p>160</p> <p>1 the members of the committee to determine how we will</p> <p>2 move through the witnesses expeditiously. To get</p> <p>3 consensus on order of witnesses and generally to ensure</p> <p>4 that there's proper de quorum during the hearing as it's</p> <p>5 taking place so that there can be the best quality of</p> <p>6 deliberations possible.</p> <p>7 Q. When you say, "work with committee members," when</p> <p>8 this is a Committee of the Whole, does that mean work</p> <p>9 with everybody?</p> <p>10 A. Right.</p> <p>11 Q. Who just thought -- who appointed you to this</p> <p>12 position?</p> <p>13 A. Lieutenant Governor appoints that committee</p> <p>14 chairman.</p> <p>15 Q. Were witnesses invited to testify on the</p> <p>16 Committee of the Whole for Senate Bill 362?</p> <p>17 A. The record reflects proponents and opponents that</p> <p>18 were invited.</p> <p>19 Q. Do you recall what the break down of witnesses</p> <p>20 was between opponents and proponents?</p> <p>21 A. No, the record will reflect that.</p> <p>22 Q. What's the -- what's the usual break down between</p> <p>23 witnesses on either side of the bill?</p> <p>24 MR. SWEETEN: Do you mean on the Committee</p> <p>25 of the Whole?</p>



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<p>161</p> <p>1 BY MS. MARANZANO:</p> <p>2 Q. Well, why don't we talk about Committee of the</p> <p>3 Whole first?</p> <p>4 MR. SWEETEN: You can talk about general</p> <p>5 procedure based on the public record.</p> <p>6 A. There is no usual.</p> <p>7 Q. (By Ms. Maranzano) What about in the State</p> <p>8 Affairs Committee while you've been chair, what's the</p> <p>9 usual break down of witnesses between supporters and</p> <p>10 opponents of the bill?</p> <p>11 MR. SWEETEN: Same instruction.</p> <p>12 A. There is no usual. Just depends on the bill</p> <p>13 and -- basically.</p> <p>14 Q. (By Ms. Maranzano) what -- during the Committee</p> <p>15 of the Whole, who invites the witnesses to testify?</p> <p>16 A. The proponents and opponents of the bill. So any</p> <p>17 member of the Senate can propose a witness and bring</p> <p>18 them. It's not -- there's not any rule about that. So</p> <p>19 that's the best way I can answer that.</p> <p>20 Q. There's no rule. Is there a limited time for</p> <p>21 which people can testify?</p> <p>22 A. That's a consensus that we normally try to</p> <p>23 develop a hearing and our standing committee hearing we</p> <p>24 have witness limits sometimes. Sometimes we don't. And</p> <p>25 on most public testimony we do have time limits in the</p>	<p>163</p> <p>1 answer. You would have to rely on the record for that.</p> <p>2 Q. Were there any public -- well, let me ask. Were</p> <p>3 there any amendments to Senate Bill 362 when it was</p> <p>4 being considered on the floor that were publicly stated</p> <p>5 as amendments to respond to the concerns that SB 362</p> <p>6 would disproportionately impact minority voters?</p> <p>7 A. We had talked about this earlier. The record</p> <p>8 would have to reflect it. Independently, I don't recall</p> <p>9 and for some reason I think we -- there was a consensus</p> <p>10 not to add amendments, but -- from everybody. But I</p> <p>11 can't -- the record would reflect that.</p> <p>12 (Exhibit No. 528 was marked.)</p> <p>13 BY MS. MARANZANO:</p> <p>14 Q. I'm showing what we're marking deposition</p> <p>15 Exhibit 528. Can you take a look and tell me if you</p> <p>16 recognize this and I will tell you that it's an excerpt</p> <p>17 not the full record?</p> <p>18 A. Appears to be an excerpt from the Senate journal</p> <p>19 for the week -- or from the day of March 18, 2009.</p> <p>20 Q. And can you look at the second page. Do you see</p> <p>21 there's something that says, "statement regarding votes</p> <p>22 cast on Senate Bill 362." If you would quickly take a</p> <p>23 look at that. Is this something you've seen before?</p> <p>24 A. This would be on the third page.</p> <p>25 Q. It starts on the second and it goes on to the</p>
<p>162</p> <p>1 Senate on public testimony.</p> <p>2 Q. Do you recall if any groups representing minority</p> <p>3 voters testified during the 2009 consideration of Senate</p> <p>4 Bill 362?</p> <p>5 A. I recall they did.</p> <p>6 Q. Do you recall if concerns were raised about</p> <p>7 Senate Bill 362's impact on minority voters, either by</p> <p>8 these groups or by others?</p> <p>9 MR. SWEETEN: You can testify to matters on</p> <p>10 the public record.</p> <p>11 A. I think the record will reflect they did. I</p> <p>12 don't recall specifically what the objections were, as</p> <p>13 we sit here today, independently.</p> <p>14 Q. (By Ms. Maranzano) Do you recall who raised</p> <p>15 those concerns?</p> <p>16 MR. SWEETEN: Same instruction.</p> <p>17 A. No. It would be on the record.</p> <p>18 Q. (By Ms. Maranzano) Do you recall if legislators</p> <p>19 raised those concerns?</p> <p>20 MR. SWEETEN: Same instruction.</p> <p>21 A. It would be on the record.</p> <p>22 Q. (By Ms. Maranzano) And you have nothing to add</p> <p>23 to the record in that regard?</p> <p>24 A. No. The record -- I don't have independent --</p> <p>25 enough independent recollection to give you an accurate</p>	<p>164</p> <p>1 third?</p> <p>2 A. Okay. Paragraph 3.</p> <p>3 MR. SWEETEN: Are you talking about the</p> <p>4 statement on the bottom?</p> <p>5 BY MS. MARANZANO:</p> <p>6 Q. The statement regarding both House and Senate</p> <p>7 Bill 362. And it starts and it says, "Senator West</p> <p>8 submitted the following statement," do you have that?</p> <p>9 A. No. Sorry. I'm a slow reader I guess. What</p> <p>10 page is it on? Third page?</p> <p>11 Q. It starts right here. But actually I'm going to</p> <p>12 direct your attention to No. 8?</p> <p>13 MR. SWEETEN: Starting here, she wants you</p> <p>14 to read that.</p> <p>15 A. Senator West, yeah. I see that.</p> <p>16 Q. (By Ms. Maranzano) Yeah. Do you recall this</p> <p>17 happening?</p> <p>18 A. No, I really don't. It's -- it may have been</p> <p>19 submitted and not read to the Senate. It may have just</p> <p>20 been submitted post-vote. Sometimes those get done.</p> <p>21 Q. Okay. Can I direct your attention to No. 8 in</p> <p>22 that -- in that statement. Do you see that it says, "Of</p> <p>23 all the opportunities members of the Senate have had to</p> <p>24 vote on voter identification legislation or Senate</p> <p>25 process regarding voter identification legislation, no</p>



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<p>165</p> <p>1 senator who is an ethnic minority has voted in favor of</p> <p>2 such legislation or the process related to such</p> <p>3 legislation?"</p> <p>4 A. I see that.</p> <p>5 Q. Based on the public record -- let me ask you</p> <p>6 this. Did you have any public response to the unified</p> <p>7 opposition of the minority members of the Senate?</p> <p>8 A. Are you talking about as reflected or a response</p> <p>9 to Senator West's statement that he placed in the</p> <p>10 record.</p> <p>11 Q. I'm asking actually, more generally. Just this</p> <p>12 statement talked about a unified opposition of minority</p> <p>13 members of the Senate. And I'm asking if you had any</p> <p>14 public response to that opposition.</p> <p>15 A. Did I, as Senator Duncan have any public</p> <p>16 response? I don't recall that I did.</p> <p>17 Q. Do you recall the reasons why senators gave for</p> <p>18 opposing voter ID?</p> <p>19 MR. SWEETEN: Objection; call for matters</p> <p>20 subject to legislative privilege. Instruct not the</p> <p>21 answer.</p> <p>22 BY MS. MARANZANO:</p> <p>23 Q. How about if we base it on the public record?</p> <p>24 MR. SWEETEN: You can testify as to matters</p> <p>25 of public record.</p>	<p>167</p> <p>1 on that basis.</p> <p>2 BY MS. MARANZANO:</p> <p>3 Q. Are you following your counsel's instruction?</p> <p>4 A. Yes.</p> <p>5 Q. Did any supporters of Senate Bill 362 publicly</p> <p>6 state that if the Senate -- the legislature did not</p> <p>7 respond to the concerns of minority legislators it might</p> <p>8 threaten the preclearance of Senate Bill 362?</p> <p>9 A. "Supporters," meaning?</p> <p>10 Q. People who voted for it.</p> <p>11 A. Members of the Senate?</p> <p>12 MR. SWEETEN: Your question is about public</p> <p>13 statements.</p> <p>14 MS. MARANZANO: Uh-huh.</p> <p>15 A. I don't know if they did or not.</p> <p>16 Q. (By Ms. Maranzano) You don't recall that?</p> <p>17 A. Right.</p> <p>18 Q. Was it true that some legislators and members of</p> <p>19 the public stayed up all night to testify about Senate</p> <p>20 Bill 362?</p> <p>21 A. The hearing lasted throughout the evening hours</p> <p>22 and concluded in the late morning hours of the following</p> <p>23 day.</p> <p>24 Q. Was there any public discussion of what prompted</p> <p>25 this level of interest in Senate Bill 362?</p>
<p>166</p> <p>1 A. Public record reflects their opposition to it.</p> <p>2 Q. (By Ms. Maranzano) Do you recall if one of the</p> <p>3 issues that they discussed on the public record was the</p> <p>4 impact that Senate Bill 362 would have on minority</p> <p>5 voters?</p> <p>6 A. The record will reflect that if it was brought</p> <p>7 up.</p> <p>8 Q. So do you have no recollection of whether that</p> <p>9 occurred?</p> <p>10 A. My independent recollection is not accurate as to</p> <p>11 exactly what was raised. Those issues generally were</p> <p>12 discussed during our fairly lengthy debate on several</p> <p>13 occasions on the issue. But specifically what issues --</p> <p>14 how those issues were framed and what evidence was</p> <p>15 brought forward I would have to rely on the record.</p> <p>16 Q. Okay. So you have a recollection that it came up</p> <p>17 generally, related to voter identification legislation?</p> <p>18 A. Correct.</p> <p>19 Q. And based on the public record, do you have any</p> <p>20 reason to believe that these senators were not being</p> <p>21 genuine about their concerns on the impact of the bill?</p> <p>22 MR. SWEETEN: I'm going to object. Because</p> <p>23 of the subjective interpretation and the sincerity of</p> <p>24 these senators would be a matter of legislative</p> <p>25 privilege. And I'm going to instruct him not to answer</p>	<p>168</p> <p>1 A. You know, I don't recall anything specifically</p> <p>2 other than what would be on the record.</p> <p>3 Q. And as you sit here today, you can't --</p> <p>4 A. Well, I remember there were statements that were</p> <p>5 made by some people who testified as experts and as</p> <p>6 laypersons. But I don't -- I can't recall specifically</p> <p>7 what they said to give you an accurate depiction of it,</p> <p>8 but the record will reflect that.</p> <p>9 Q. Well, what do you recall generally, even if you</p> <p>10 don't recall specifically?</p> <p>11 A. What I just said.</p> <p>12 Q. That's it?</p> <p>13 A. Right.</p> <p>14 Q. Okay.</p> <p>15 A. I mean, I recall some loud voices. I recall some</p> <p>16 passionate testimony. I recall some very</p> <p>17 straightforward testimony. And, you know, the</p> <p>18 testimony, I thought, and the debate throughout the day</p> <p>19 was generally -- we kept things moving. And the debate</p> <p>20 was on both sides of the issue. And I can't remember</p> <p>21 generally or specifically -- or specifically what was</p> <p>22 said by any member of the Senate that day. But it is</p> <p>23 reflected in the record. That's why we kept the record.</p> <p>24 Q. Did you have any role when Senate Bill 362 was</p> <p>25 referred to the House?</p>



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<p style="text-align: right;">169</p> <p>1 A. No.</p> <p>2 Q. Did you have any communications with any members</p> <p>3 of the House about Senate Bill 362?</p> <p>4 A. Yes.</p> <p>5 Q. With whom?</p> <p>6 A. Delwin Jones.</p> <p>7 Q. Delwin Jones? Is that what you said?</p> <p>8 A. Right.</p> <p>9 Q. Can you tell me in a general way what that</p> <p>10 communication was about?</p> <p>11 A. He's a member of the Lubbock delegation. Yeah, I</p> <p>12 can remember generally. But it was just about the bill.</p> <p>13 Q. Do you -- was it one communication or more than</p> <p>14 one?</p> <p>15 A. Just one or two.</p> <p>16 Q. Was it after the bill had been referred to the</p> <p>17 House or before?</p> <p>18 A. It was after.</p> <p>19 Q. Do you remember what happened to the bill in the</p> <p>20 House?</p> <p>21 A. Yes.</p> <p>22 Q. What happened?</p> <p>23 A. It didn't pass.</p> <p>24 Q. Was that because essentially the time ran out?</p> <p>25 MR. SWEETEN: Don't reveal matters of</p>	<p style="text-align: right;">171</p> <p>1 council for the Secretary of State, or at least was?</p> <p>2 A. Okay.</p> <p>3 Q. Does that refresh your recollection as to what</p> <p>4 this e-mail exchange is about?</p> <p>5 A. Yes. I guess -- well, I'm not familiar with this</p> <p>6 e-mail. So -- but if he works for the Secretary of</p> <p>7 State we often, through the State Affairs Committee,</p> <p>8 communicated with the Secretary of State's office about</p> <p>9 issues that we had questions about technically.</p> <p>10 Q. So what is the ID verification process bill that</p> <p>11 Jennifer refers to in her e-mail?</p> <p>12 A. I'll have --</p> <p>13 MR. SWEETEN: Don't discuss matters of</p> <p>14 legislative privilege including communications you had</p> <p>15 with State agencies.</p> <p>16 BY MS. MARANZANO:</p> <p>17 Q. But just generally, can you just tell me what --</p> <p>18 I mean, I'm not -- I'm not interested in what this</p> <p>19 exchange is about. I'm just asking you what is the</p> <p>20 topic on which this says we're not going to file voter</p> <p>21 identification -- ID verification process bill?</p> <p>22 A. I don't know.</p> <p>23 Q. Okay.</p> <p>24 A. I seriously do not know.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">170</p> <p>1 legislative privilege in answering the question.</p> <p>2 A. Well, the record is fairly clear about what</p> <p>3 happened on that bill as it went to the House.</p> <p>4 Q. (By Ms. Maranzano) And you don't want to add</p> <p>5 anything to the record?</p> <p>6 A. I don't think you could add much to that record.</p> <p>7 Q. Fair enough. Have you heard of ID verification?</p> <p>8 MR. SWEETEN: You can answer as a general</p> <p>9 matter. Don't reveal any legislative -- your mental</p> <p>10 impressions. That would be subject to the legislative</p> <p>11 privilege.</p> <p>12 A. No. I'll have to say I don't know what you're</p> <p>13 talking about.</p> <p>14 MS. MARANZANO: Can we mark this?</p> <p>15 (Exhibit No. 529 was marked.)</p> <p>16 BY MS. MARANZANO:</p> <p>17 Q. I'm showing you what we're marking as deposition</p> <p>18 Exhibit 527? No, 529. Do you recognize this?</p> <p>19 A. No, but it's from Jennifer.</p> <p>20 Q. You testified earlier that Jennifer Fagan is a</p> <p>21 member of your staff?</p> <p>22 A. That's correct.</p> <p>23 Q. Do you know who John Sepehri is?</p> <p>24 A. John Sepehri? You'll have to refresh my memory.</p> <p>25 Q. My recollection is John Sepehri is the general</p>	<p style="text-align: right;">172</p> <p>1 A. It may have been discussed and I may have said no</p> <p>2 or we may not have. I don't know. I just have no</p> <p>3 idea what -- this is not ringing a bell with me today.</p> <p>4 Other than we didn't file it.</p> <p>5 MS. MARANZANO: Can we label that?</p> <p>6 (Exhibit No. 530 was marked.)</p> <p>7 BY MS. MARANZANO:</p> <p>8 Q. Senator, I'm showing you what we're labeling as</p> <p>9 Exhibit 530, for the record. Can you take a look at</p> <p>10 this and tell me if you recognize it?</p> <p>11 A. I would recognize this to be legislation titled</p> <p>12 Senate Bill 14.</p> <p>13 Q. If you look at the last page it has signatures on</p> <p>14 it.</p> <p>15 A. This appears to be signatures reflecting that it</p> <p>16 is the enrolled version of the bill signed by the</p> <p>17 governor.</p> <p>18 Q. Do you have any knowledge, based on public</p> <p>19 record, of when Senator Fraser started working on this</p> <p>20 bill?</p> <p>21 A. No, I do not.</p> <p>22 Q. Did you or anyone in your office have</p> <p>23 conversations with Senator Fraser about the development</p> <p>24 of what would become Senate Bill 14?</p> <p>25 A. Probably, at some point in time we did.</p>



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<p style="text-align: right;">173</p> <p>1 Q. And when was that?</p> <p>2 A. I cannot tell you a specific time. I do not</p> <p>3 know.</p> <p>4 Q. Would that have been you or would that have been</p> <p>5 your staff who had that communication?</p> <p>6 A. If Senator Fraser and I had a conversation it</p> <p>7 would have been more or less informal. It would not be</p> <p>8 unusual for Senator Fraser's office to contact my staff</p> <p>9 for information or records from the last committee or</p> <p>10 from hearing or to discuss the issue. It would not be</p> <p>11 unusual.</p> <p>12 Q. Who on your staff would Senator Fraser have</p> <p>13 contacted?</p> <p>14 A. It would be Jennifer.</p> <p>15 Q. When you said "record," -- what is the first</p> <p>16 thing you said?</p> <p>17 A. Well, I mean, this is speculation a little bit.</p> <p>18 So I'm just saying if somebody wanted a document or</p> <p>19 something they might call our office and request it.</p> <p>20 Q. Do you have any knowledge as to whether Senator</p> <p>21 Fraser's staff and Ms. Fagan did have any communications</p> <p>22 about Senate Bill 14?</p> <p>23 A. Define what you're talking about communications.</p> <p>24 Q. I'm referring very broadly to conversations,</p> <p>25 e-mails?</p>	<p style="text-align: right;">175</p> <p>1 A. No, I couldn't.</p> <p>2 Q. Could you give me an approximation?</p> <p>3 A. It would be a guess.</p> <p>4 Q. Did you have conversations with other legislators</p> <p>5 about Senate Bill 14?</p> <p>6 A. When?</p> <p>7 Q. At any time?</p> <p>8 A. I assume when you say "Senate Bill 14," it would</p> <p>9 have to have been from the time we filed it because it</p> <p>10 didn't have a name then. I'm just trying to understand</p> <p>11 the time frames here.</p> <p>12 Q. I appreciate that. Why don't we start and say</p> <p>13 did you have any conversations with any legislators</p> <p>14 about what would become Senate Bill 14?</p> <p>15 A. No.</p> <p>16 Q. Did you have any conversations with legislators</p> <p>17 about Senate Bill 14?</p> <p>18 A. Yes.</p> <p>19 Q. With whom?</p> <p>20 A. Well, from the time it was introduced until the</p> <p>21 time it was passed, probably most members of the Texas</p> <p>22 Senate.</p> <p>23 Q. Okay. And would those have been verbal</p> <p>24 communications?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">174</p> <p>1 A. Yes.</p> <p>2 Q. Yes you do have knowledge?</p> <p>3 A. Yes.</p> <p>4 Q. And did they?</p> <p>5 A. The only -- the only communications that I would</p> <p>6 be aware of would be communications about logistics.</p> <p>7 They're going to file a bill. We're going to --</p> <p>8 MR. SWEETEN: Don't reveal the substance on</p> <p>9 it though.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. Are you aware of whether there were any</p> <p>12 substantive communications between your staff and</p> <p>13 Senator Fraser's staff about Senate Bill 14?</p> <p>14 A. I'm not -- I'm not aware of any.</p> <p>15 Q. And I believe you said you may have had</p> <p>16 conversations with Senator Fraser, but you don't recall</p> <p>17 specifically whether you did or not?</p> <p>18 A. Right.</p> <p>19 Q. And would your conversations with Senator Fraser</p> <p>20 have been about the substance of the bill or about the</p> <p>21 logistics of the bill?</p> <p>22 A. Probably both.</p> <p>23 Q. And I assume since you said you have no specific</p> <p>24 recollection you couldn't tell me how many substantive</p> <p>25 conversations you had with Senator Fraser?</p>	<p style="text-align: right;">176</p> <p>1 Q. Did you have any --</p> <p>2 A. Unless there was -- unless there was some writing</p> <p>3 between Senator Van de Putte and myself, she was acting</p> <p>4 as chairman of the caucus. And as in 2009, I seem to</p> <p>5 recall she may have sent a similar letter in 2011. But</p> <p>6 I don't -- I'm sure you've got that if it's part of the</p> <p>7 record.</p> <p>8 Q. Did you have any conversations with any</p> <p>9 legislators other than Senator Fraser who we've already</p> <p>10 talked about, about the development or drafting of</p> <p>11 Senate Bill 14?</p> <p>12 MR. SWEETEN: Objection; vague. Go ahead</p> <p>13 and answer it.</p> <p>14 A. As far as drafting the original version, no.</p> <p>15 Q. (By Ms. Maranzano) How about drafting later</p> <p>16 versions?</p> <p>17 A. Only to understand what was in the bill, which</p> <p>18 would be generally what a legislator --</p> <p>19 MR. SWEETEN: Don't talk about the</p> <p>20 conversation.</p> <p>21 BY MS. MARANZANO:</p> <p>22 Q. Who were those conversations with?</p> <p>23 A. I don't recall all who would have been involved</p> <p>24 in that.</p> <p>25 Q. Well, can you give me some names of who was</p>

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<p style="text-align: right;">177</p> <p>1 involved in that?</p> <p>2 A. Well, it probably would have been Senator Fraser,</p> <p>3 might have involved Senator Williams, Senator -- I don't</p> <p>4 know if it involved Carona or not. It would have</p> <p>5 involved Senator Van de Putte, Senator Ellis and others</p> <p>6 who, as we generally discuss legislative matters coming</p> <p>7 before the body.</p> <p>8 Q. Are the members that you've just named on the</p> <p>9 State Affairs Committee?</p> <p>10 A. Some of them are.</p> <p>11 Q. Which ones are not?</p> <p>12 A. Well, I think Carona used to be. I think most of</p> <p>13 them are. Maybe I talked to Senator West. He's not on</p> <p>14 the committee.</p> <p>15 Q. And you said, "to understand what was in the</p> <p>16 bill." Is that what you testified to? Those were your</p> <p>17 communications?</p> <p>18 A. Well, just a listing of the bill and what's in</p> <p>19 the bill.</p> <p>20 Q. That's how you're describing your communications</p> <p>21 with all of these members?</p> <p>22 A. Right. Right.</p> <p>23 Q. And when would those -- when would those</p> <p>24 communications have occurred?</p> <p>25 A. Throughout the period of deliberations on the</p>	<p style="text-align: right;">179</p> <p>1 recall any?</p> <p>2 A. I don't remember any. Not saying I didn't. I</p> <p>3 just don't remember any.</p> <p>4 Q. Let me ask you this. Is it common to talk to the</p> <p>5 governor's office about ongoing legislation?</p> <p>6 A. For me --</p> <p>7 MR. SWEETEN: Objection; vague and not</p> <p>8 limited in time and scope, foundation. But you can go</p> <p>9 ahead and answer it if you can. That's fine.</p> <p>10 A. The answer is no. It's not common.</p> <p>11 Q. (By Ms. Maranzano) Can you take a look at Senate</p> <p>12 Bill 14? In particular, I would like to direct your</p> <p>13 attention to Section 14 of the bill.</p> <p>14 A. On what page?</p> <p>15 Q. It's on Page 9. Do you see that it lists in that</p> <p>16 section the forms of identification that are permissible</p> <p>17 under Senate Bill 14?</p> <p>18 A. The section is entitled documentation of proof of</p> <p>19 identification.</p> <p>20 Q. Yep. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me what the major difference between</p> <p>23 Senate Bill 14 and Senate Bill 362 are?</p> <p>24 MR. SWEETEN: You can answer based on the</p> <p>25 text of the bill. Don't give your mental impressions</p>
<p style="text-align: right;">178</p> <p>1 bill.</p> <p>2 Q. Did you have any communications with the</p> <p>3 Lieutenant Governor about Senate Bill 14?</p> <p>4 A. Yes.</p> <p>5 Q. And when was that -- or when were those?</p> <p>6 A. Generally, as I've stated, randomly throughout</p> <p>7 the process of deliberations on the bill.</p> <p>8 Q. And what was the general nature of that</p> <p>9 communication?</p> <p>10 MR. SWEETEN: You can give a general subject</p> <p>11 matter description of the communication. Do not reveal</p> <p>12 the subject for communication.</p> <p>13 A. Progress on setting the hearing, the process that</p> <p>14 the senators have discussed with regard to the process</p> <p>15 for procedures for the hearing, generally that was the</p> <p>16 primary -- main reason for discussions.</p> <p>17 Q. (By Ms. Maranzano) Did you set the hearing date</p> <p>18 for the -- for Senate Bill 14?</p> <p>19 A. I'll answer this in a way that nobody will</p> <p>20 object. I don't remember.</p> <p>21 Q. Did you have any conversations with the</p> <p>22 governor's office about Senate Bill 14?</p> <p>23 MR. SWEETEN: You can answer.</p> <p>24 A. I don't know if I did or not.</p> <p>25 Q. (By Ms. Maranzano) Does that mean you don't</p>	<p style="text-align: right;">180</p> <p>1 and thoughts about it. We'll take a little while so</p> <p>2 Jennifer can get a bite in.</p> <p>3 A. There are numerous differences textually for one</p> <p>4 reason or another and I can't tell you why.</p> <p>5 MR. SWEETEN: Don't provide the reasons why.</p> <p>6 She's just asking if there is a difference from this to</p> <p>7 this.</p> <p>8 A. There are differences.</p> <p>9 Q. (By Ms. Maranzano) Does Senate Bill 14 allow for</p> <p>10 any forms of non-photo identification?</p> <p>11 A. The provisions that are in Section 14 of the bill</p> <p>12 do not appear to provide a form of identification other</p> <p>13 than one that includes a photo ID and I'm assuming a</p> <p>14 license to carry a concealed hand gun license does.</p> <p>15 That's in section 14.</p> <p>16 Q. If you look at the very beginning of the</p> <p>17 provision under Section 14, it says Section 63.0101. Do</p> <p>18 you see that it actually specifies that the forms of</p> <p>19 identification listed need to have a photo</p> <p>20 identification?</p> <p>21 A. Line 17 inserts the word photo.</p> <p>22 Q. Can you tell me what the purpose was of removing</p> <p>23 non-photo identification as allowable for voter</p> <p>24 identification?</p> <p>25 MR. SWEETEN: Don't answer the question. He</p>

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<p>181</p> <p>1 can testify about the general purpose of the bill. He's</p> <p>2 not going to testify about the specifics of one</p> <p>3 insertion, deletion, we're not going to parse it that</p> <p>4 way. That was issuing the purpose of the court's order.</p> <p>5 I'm going to instruct him not to answer that question.</p> <p>6 BY MS. MARANZANO:</p> <p>7 Q. Was there anything in the public record that you</p> <p>8 can refer to related to the purpose of removing</p> <p>9 non-photo IDs from Senate Bill 14?</p> <p>10 MR. SWEETEN: You can testify based upon</p> <p>11 matters of the public record. Don't reveal your</p> <p>12 thoughts, mental impressions in answering the question.</p> <p>13 A. The public record has a discussion between</p> <p>14 members of the Senate and debate on the floor concerning</p> <p>15 the purpose for the exclusion of non-photo ID methods of</p> <p>16 identification.</p> <p>17 Q. (By Ms. Maranzano) And what was the purpose of</p> <p>18 that as stated in the public record?</p> <p>19 A. The public record would reflect that.</p> <p>20 Q. Well, what's your testimony about it, as you sit</p> <p>21 here today?</p> <p>22 A. The general purpose of the bill is to basically</p> <p>23 ensure voter ballot integrity.</p> <p>24 Q. And removing non-photo identification from the</p> <p>25 bill is related to ensuring valid integrity?</p>	<p>183</p> <p>1 public record.</p> <p>2 Q. (By Ms. Maranzano) You have no independent</p> <p>3 recollection?</p> <p>4 A. Not that would be accurate that I could testify</p> <p>5 to.</p> <p>6 Q. And what about your recollection of the public</p> <p>7 record as related to the purpose of allowing forms of</p> <p>8 identification that had expired 60 days before</p> <p>9 presentation?</p> <p>10 MR. SWEETEN: Once again, you can refer to</p> <p>11 matters in the public record in answering this question.</p> <p>12 Don't reveal matters of legislative privilege.</p> <p>13 A. I couldn't answer that. I don't have a</p> <p>14 recollection of the details concerning those</p> <p>15 discussions.</p> <p>16 Q. (By Ms. Maranzano) Are you aware of the source</p> <p>17 of the language for Senate Bill 14 or sources of the</p> <p>18 language?</p> <p>19 MR. SWEETEN: You can answer that question</p> <p>20 "yes" or "no".</p> <p>21 A. Yes.</p> <p>22 Q. (By Ms. Maranzano) Was there anything on the</p> <p>23 public record about the source or sources of the</p> <p>24 language in Senate Bill 14?</p> <p>25 A. I think there may be. I don't recall</p>
<p>182</p> <p>1 MR. SWEETEN: He's not going to answer that</p> <p>2 question. He's not going to answer the reasons for the</p> <p>3 insertion or deletions of any bill. He's answered the</p> <p>4 general purpose of the bill. We're not going to have</p> <p>5 him give his thoughts and general impressions on</p> <p>6 various -- the reasons and thoughts behind -- or his</p> <p>7 impressions about the deletion or insertion of a given</p> <p>8 paragraph. Legislative privilege.</p> <p>9 BY MS. MARANZANO:</p> <p>10 Q. I'm going to ask you about the public record</p> <p>11 related to the removal of non-photo ID. You mentioned</p> <p>12 ensuring voter integrity, the integrity of the ballot.</p> <p>13 So based on the public record, what was said about how</p> <p>14 non-photo IDs are connected to ensuring the integrity of</p> <p>15 the ballot?</p> <p>16 MR. SWEETEN: Misstates the testimony.</p> <p>17 Objection. You can answer as to what was said in the</p> <p>18 public record to the extent you recall. Do not give</p> <p>19 reasons behind any changes made. That's subject to the</p> <p>20 legislative privilege. You can answer based on that</p> <p>21 instruction.</p> <p>22 A. I can't -- I do not have independent recollection</p> <p>23 of exactly what was said. I would not want to</p> <p>24 mischaracterize what was said. And the public record</p> <p>25 accurately reflects that and I would refer you to the</p>	<p>184</p> <p>1 specifically. But I think there were discussions about</p> <p>2 that on the Senate floor --</p> <p>3 Q. Can you tell -- I'm sorry.</p> <p>4 A. Or in the debate.</p> <p>5 Q. Can you tell me what those discussions were?</p> <p>6 A. Not without seeing the record.</p> <p>7 Q. You can't testify to anything, as you sit here</p> <p>8 today?</p> <p>9 A. Again, I don't want to be inaccurate. And what I</p> <p>10 recall about what was said as opposed to what was said</p> <p>11 is not relevant. The record is the relevant testimony</p> <p>12 with regard to the issues that you're asking about.</p> <p>13 Q. Who was involved in the drafting of Senate Bill</p> <p>14 14?</p> <p>15 A. Senator Fraser.</p> <p>16 Q. Anybody else?</p> <p>17 A. I have no recollection of who else might have</p> <p>18 been involved. It came out of his office. And to what</p> <p>19 extent other members or other staff members were</p> <p>20 involved, I don't know.</p> <p>21 Q. Did you have any communications with current or</p> <p>22 former legislators about Senate Bill 14 -- I'm sorry.</p> <p>23 Do you have any communications about Senate Bill 14 with</p> <p>24 current or former legislators who had offered other</p> <p>25 voter identification bills?</p>

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<p>185</p> <p>1 A. I don't know.</p> <p>2 Q. You don't know?</p> <p>3 A. I don't know.</p> <p>4 Q. Because you don't know --</p> <p>5 A. Yeah. I don't know what other people have</p> <p>6 offered. If you could be -- I don't know.</p> <p>7 Q. Did you have any conversations with</p> <p>8 Representative Denny about Senate Bill 14?</p> <p>9 A. No. Well, if I did it would have been in 2005</p> <p>10 whenever, I think she had -- she had a bill -- or wasn't</p> <p>11 she on one of those bills that we looked at earlier.</p> <p>12 Q. I'm sorry. Did you have any communications with</p> <p>13 her about Senate Bill 14?</p> <p>14 A. Oh, no, I don't believe so.</p> <p>15 Q. Did you have any communications with</p> <p>16 Representative Betty Brown about Senate Bill 14?</p> <p>17 A. No, I don't know Betty Brown very well.</p> <p>18 Q. Did you have any communications with</p> <p>19 representative Leo Berman about Senate Bill 14?</p> <p>20 A. I don't recall having any with Leo.</p> <p>21 Q. And did you have any conversations with the staff</p> <p>22 people of any of those members?</p> <p>23 A. I don't believe so.</p> <p>24 Q. Did you have any communications with officials or</p> <p>25 legislators in the State of Georgia about Senate Bill</p>	<p>187</p> <p>1 Senate debate.</p> <p>2 Q. (By Ms. Maranzano) Okay. We can get to that in</p> <p>3 a few minutes.</p> <p>4 A. Okay.</p> <p>5 Q. But other than that, do you recall any</p> <p>6 conversations, publicly, about the -- about adding</p> <p>7 additional forms of identification to Senate Bill 14?</p> <p>8 MR. SWEETEN: You can testify about matters</p> <p>9 in the public record.</p> <p>10 A. The public record probably reflects some</p> <p>11 discussion about that.</p> <p>12 Q. (By Ms. Maranzano) Okay. And you have no</p> <p>13 independent recollection?</p> <p>14 A. I don't have independent recollection of what was</p> <p>15 said other than the fact that I believe there was some</p> <p>16 discussion about that on the public record.</p> <p>17 Q. Based on the public record, are you aware of any</p> <p>18 analysis as to how many registered voters possess the</p> <p>19 required forms of identification in Senate Bill 14?</p> <p>20 MR. SWEETEN: You can testify about matters</p> <p>21 on the public record.</p> <p>22 A. I believe the public record may reflect some</p> <p>23 estimates of that. But I don't recall exactly what they</p> <p>24 reflect, the record would show that more accurately.</p> <p>25 Q. (By Ms. Maranzano) Have you heard of a Spanish</p>
<p>186</p> <p>1 14?</p> <p>2 A. No.</p> <p>3 Q. Did you have communications with any officials or</p> <p>4 legislators in the State of Indiana about Senate Bill</p> <p>5 14?</p> <p>6 A. I did not.</p> <p>7 Q. Did anybody in your office?</p> <p>8 A. I do not know. Jennifer may have, but I don't</p> <p>9 know.</p> <p>10 Q. And how about with Georgia, do you know if</p> <p>11 anybody in your office had communications?</p> <p>12 A. I don't know.</p> <p>13 Q. Did the legislature publicly considered adding</p> <p>14 additional forms of identification to Senate Bill 14?</p> <p>15 MR. SWEETEN: Don't answer to the extent it</p> <p>16 calls for you do reveal legislative privilege. You can</p> <p>17 testify as to matters on the public record.</p> <p>18 A. I can't -- the reason I'm having trouble with</p> <p>19 this is because I can't remember if we offered</p> <p>20 amendments on Senate Bill 14 on the floor during the</p> <p>21 Committee of the Whole or during the debate. The record</p> <p>22 will reveal that. And it may be that someone did, but</p> <p>23 it would depend on whether or not there were amendment</p> <p>24 proposals that were offered to Senate Bill 14, either</p> <p>25 during the Committee of the Whole or during the general</p>	<p>188</p> <p>1 surname voter registration analysis?</p> <p>2 A. I believe I have.</p> <p>3 Q. Are you aware, based on the public record,</p> <p>4 whether the Secretary of State conducted such an</p> <p>5 analysis while the legislature was considering Senate</p> <p>6 Bill 14?</p> <p>7 A. You would have to go to the record to be accurate</p> <p>8 about that. I seem to recall some discussion about</p> <p>9 that, but I don't recall what the conclusion was.</p> <p>10 Q. Do you recall Senator Williams asking the</p> <p>11 Secretary of State's office?</p> <p>12 A. No.</p> <p>13 Q. Did Legislature -- let me start again. Are you</p> <p>14 aware, based on the public record, of whether the</p> <p>15 legislature conducted any analysis to determine whether</p> <p>16 minority voters would be disproportionately impacted by</p> <p>17 Senate Bill 14?</p> <p>18 MR. SWEETEN: You're asking him about</p> <p>19 legislator's analysis. It calls for speculation. It</p> <p>20 also calls for him to reveal legislative privilege</p> <p>21 including your mental impressions, thoughts,</p> <p>22 motivations, discussions with other members, staff</p> <p>23 members. And I'm going to instruct him not to answer on</p> <p>24 that basis. To the extent that there is a discussion on</p> <p>25 the public record regarding that issue I'll let you</p>



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<p style="text-align: right;">189</p> <p>1 refer to the record, but other than do not answer the</p> <p>2 question.</p> <p>3 BY MS. MARANZANO:</p> <p>4 Q. Are there any specific conversations on the</p> <p>5 public record about that?</p> <p>6 A. You'll have to look at the record.</p> <p>7 THE REPORTER: I'm sorry. I didn't</p> <p>8 understand.</p> <p>9 THE WITNESS: She'll -- you'll have to look</p> <p>10 at the record.</p> <p>11 BY MS. MARANZANO:</p> <p>12 Q. Are you aware of any legislators publicly</p> <p>13 requesting that analysis?</p> <p>14 A. As I sit here today, no. The record may reflect</p> <p>15 that they did.</p> <p>16 Q. If I told you that Senator Fraser's chief of</p> <p>17 staff testified that there was no analysis of who had</p> <p>18 some ID for purposes of Senate Bill 14, would you</p> <p>19 dispute that?</p> <p>20 MR. SWEETEN: Objection; assumes facts not</p> <p>21 in evidence, misstates testimony and also calls for</p> <p>22 matters subject to the legislative privilege. Don't</p> <p>23 answer if it would reveal any matters subject to the</p> <p>24 privilege.</p> <p>25 A. I can't respond to that.</p>	<p style="text-align: right;">191</p> <p>1 citizenship certificate?</p> <p>2 A. Not off the top of my head.</p> <p>3 Q. Do you know -- do you know how much it costs to</p> <p>4 obtain a US passport?</p> <p>5 A. Yes.</p> <p>6 Q. How much?</p> <p>7 A. I think it's \$37, but I just bought one so that's</p> <p>8 why I know. But I think it's -- by the time you get the</p> <p>9 picture made and everything like that, it's like \$35 to</p> <p>10 \$37.</p> <p>11 Q. And do you know what documents you need to</p> <p>12 provide in order to get one, a US passport?</p> <p>13 A. Yes.</p> <p>14 Q. Which documents?</p> <p>15 A. A birth certificate.</p> <p>16 Q. Do you know how long it takes to obtain a US</p> <p>17 passport?</p> <p>18 A. Not generally.</p> <p>19 Q. How long did it take you to get yours?</p> <p>20 A. I'm speculating. A month, three weeks to a</p> <p>21 month.</p> <p>22 Q. Is there anything in public record about a change</p> <p>23 in circumstances between 2009 and 2011 that would have</p> <p>24 made non-photo identification acceptable in 2009, but</p> <p>25 not in 2011?</p>
<p style="text-align: right;">190</p> <p>1 Q. (By Ms. Maranzano) Because it's privileged?</p> <p>2 A. Because I don't know.</p> <p>3 Q. Do you know what a military identification card</p> <p>4 is?</p> <p>5 A. Generally.</p> <p>6 Q. What is it?</p> <p>7 A. Well, I assume that it's an identification issued</p> <p>8 to persons who are enlisted in the military.</p> <p>9 Q. Do you know how many different forms of</p> <p>10 identification fall into that category?</p> <p>11 A. I don't recall.</p> <p>12 Q. Is that something -- when you say "you don't</p> <p>13 recall," is that something you think you knew when you</p> <p>14 considered Senate Bill 14?</p> <p>15 MR. SWEETEN: And don't answer that. You're</p> <p>16 not going to reveal your mental impressions or analysis</p> <p>17 or thought process. That's a legislative privilege.</p> <p>18 Instruct not to answer.</p> <p>19 BY MS. MARANZANO:</p> <p>20 Q. Do you know what a citizenship certificate is?</p> <p>21 A. Only generally.</p> <p>22 Q. Do you know what steps a person needs to take to</p> <p>23 obtain a citizenship certificate?</p> <p>24 A. Not off the top of my head.</p> <p>25 Q. Do you know how much it costs to obtain a</p>	<p style="text-align: right;">192</p> <p>1 MR. SWEETEN: Objection; calls for matters</p> <p>2 subject to the legislative privilege. You can testify</p> <p>3 if there was such an explicit statement made in the</p> <p>4 public record. But otherwise don't reveal your thought</p> <p>5 processes.</p> <p>6 A. I don't know if there was a statement like that</p> <p>7 might made or not.</p> <p>8 Q. (By Ms. Maranzano) You have no recollection of</p> <p>9 that?</p> <p>10 A. No.</p> <p>11 Q. Was there any statement in the public record</p> <p>12 about removing from Senate Bill 14 the option to show a</p> <p>13 state or federal issued identification as is allowed in</p> <p>14 Senate Bill 362?</p> <p>15 MR. SWEETEN: You can testify about matters</p> <p>16 on the public record.</p> <p>17 A. I don't completely understand the question.</p> <p>18 Q. (By Ms. Maranzano) Do you recall when we talked</p> <p>19 about Senate Bill 362 we read that section --</p> <p>20 A. Right.</p> <p>21 Q. That allowed for a State or federally issued</p> <p>22 photo ID. Was there anything stated on the public</p> <p>23 record about the purpose of removing those forms of</p> <p>24 identification from Senate Bill 14, although they had</p> <p>25 been allowed in Senate Bill 362?</p>



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<p style="text-align: right;">193</p> <p>1 MR. SWEETEN: Same objection and 2 instruction. 3 A. That issue may have been discussed on the Senate 4 floor and would be a part of the Senate record. 5 Q. (By Ms. Maranzano) You have no independent 6 recollection? 7 A. Not really. 8 Q. Any at all? 9 A. Well, generally a change in the bill, and I 10 assume that a change in the bill was discussed. I'm 11 going off of memory, but I would assume that in 14 there 12 was a change from 362 and those discussions took place 13 on the Senate floor. And I remember the -- that Senator 14 Fraser probably laid out those changes on the public 15 record. That's what I recall. But I couldn't tell do 16 you specifically what he said. You would have to go to 17 the record. 18 Q. Was it Senator Fraser's decision to make those 19 changes? 20 MR. SWEETEN: Objection. Requires him to 21 speculate. Requires him to reveal communications 22 between -- if any, between he and Senator Fraser or any 23 other legislator. So to the extent it's even passed by 24 legislative privilege don't answer the question. 25 BY MS. MARANZANO:</p>	<p style="text-align: right;">195</p> <p>1 legislator who made a statement on the public record 2 about the racial composition of the license to carry 3 holders? 4 THE REPORTER: Wait. 5 MS. MARANZANO: About the racial composition 6 of the license to carry holders. 7 A. I recall there was a conversation about the -- on 8 the public record about the use of the license to carry 9 as a form of identification. I do not remember -- I 10 cannot recall independently with accuracy the content of 11 those statements. That would be reflected in the 12 record. 13 Q. (By Ms. Maranzano) And how did the exceptions 14 with individuals with disability come to be included in 15 Senate Bill 14, based on the public record? 16 MR. SWEETEN: Don't answer to the extent it 17 would require to you to reveal matters of legislative 18 privilege. To the extent you can refer to matters in 19 the public record, you can do so. 20 A. There may have been some testimony. I can't 21 recall specifically. I think there was concerning that. 22 Q. (By Ms. Maranzano) From certain advocates, did 23 you say? 24 A. Correct. On the record. Or some reference to 25 that on the record.</p>
<p style="text-align: right;">194</p> <p>1 Q. I assume you're following your counsel's 2 instruction? 3 A. Yes, ma'am. 4 Q. Do you recall the circumstances by which the 5 license to carry a concealed handgun were included 6 in -- came to be included in Senate Bill 14? 7 MR. SWEETEN: Don't reveal matters of 8 privilege. 9 A. No. 10 Q. (By Ms. Maranzano) Do you know the racial 11 composition of individuals who possess a license to 12 carry a concealed handgun? 13 A. No. No. I should say it louder. 14 MR. SWEETEN: An objection to the extent it 15 calls for legislative privilege. 16 BY MS. MARANZANO: 17 Q. Is it disproportionately white relative to Texas 18 registered voters? 19 MR. SWEETEN: Objections; asked and 20 answered. Objection to the extent it calls for your 21 mental impressions about a bill, but you can answer 22 otherwise. 23 A. I don't know. If it's on the record, it's on the 24 record. 25 Q. (By Ms. Maranzano) Well, are you aware of any</p>	<p style="text-align: right;">196</p> <p>1 Q. And was this added? Was this provisions added to 2 the bill after the testimony from advocates? 3 A. I don't -- 4 MR. SWEETEN: Hold on a minute. Hold on a 5 minute. Can you read the question back, please? 6 (Requested question was read.) 7 MR. SWEETEN: So you're asking about an 8 amendment, whether it was -- which is a public record, 9 whether it was added after a public record statement. 10 Is that the question? 11 MS. MARANZANO: Uh-huh. 12 MR. SWEETEN: Then you can answer as 13 phrased. 14 A. I don't know. 15 Q. (By Ms. Maranzano) Is your recollection that the 16 amendment was a response to the testimony from advocates 17 from the disability community? 18 MR. SWEETEN: Don't answer the question. It 19 calls for matters of legislative privilege as to what 20 the response was, if any. 21 BY MS. MARANZANO: 22 Q. How did the exception for individuals with 23 religious objections to being photographed come to be 24 included in Senate Bill 14? 25 MR. SWEETEN: Don't answer the question. It</p>



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<p style="text-align: right;">197</p> <p>1 calls for matters of legislative privilege. You can  2 testify about the public record, such as an amendment.  3 BY MS. MARANZANO:  4 Q. Was that part of an amendment?  5 A. You would have to look at the record.  6 Q. You have no independent recollection?  7 A. No.  8 Q. Is it fair to say that the legislators --  9 legislators modify Senate Bill 14 to respond to concerns  10 raised by disability groups?  11 MR. SWEETEN: Don't answer the question.  12 Calls for matters of legislative privilege.  13 BY MS. MARANZANO:  14 Q. Were there any public discussions about the  15 provisions in Senate Bill 14 pertaining to the  16 administration of identification requirement -- that the  17 identification requirement at the polling place?  18 MR. SWEETEN: You can answer if there's a  19 public statement.  20 A. I'm not sure that I follow the question enough to  21 give you an answer. I don't -- so I can't answer the  22 question.  23 Q. (By Ms. Maranzano) Were there any public  24 discussions about how at a polling place that Senate  25 Bill 14 would be administered? In other words, how the</p>	<p style="text-align: right;">199</p> <p>1 form of identification was added to Senate Bill 14?  2 MR. SWEETEN: Don't reveal matters of  3 legislative privilege. In fact, court reporter, would  4 you please read that question back.  5 (Requested question was read.)  6 MR. SWEETEN: Okay. You can -- because it's  7 got matters of the public record. Don't reveal  8 legislative privilege, but you can answer as to the  9 public record. Go ahead.  10 A. No, I do not know when or how it was added. I'm  11 about ready for a break. I don't know about y'all.  12 MR. SWEETEN: Okay. Let's take a break.  13 MS. MARANZANO: Let's take a break.  14 (Brief recess.)  15 BY MS. MARANZANO:  16 Q. Senator, before the break we were talking about  17 the election identification certificate. Are you aware,  18 based on the public record, of concerns about potential  19 difficulties in obtaining an election certificate?  20 A. I'm aware that the issue of the ease or  21 difficulty of retaining a certificate was discussed on  22 the public record.  23 Q. Do you recall there being concerns voiced on the  24 public record about the distance to drive to those  25 offices?</p>
<p style="text-align: right;">198</p> <p>1 requirements laid out in Senate Bill 14 would come to be  2 administered at a polling place.  3 A. You would have to refer to the public record.  4 Q. You have no independent recollection of those  5 discussions?  6 THE REPORTER: No recollection of what?  7 MS. MARANZANO: Of those discussions on the  8 public record.  9 A. I do not have an independent recollection of what  10 was said. I am only -- you have to refer to the record  11 on that.  12 Q. (By Ms. Maranzano) Were there any public  13 discussions about including more specific language in  14 Senate Bill 14 related to what a poll worker would need  15 to do to verify somebody's identity?  16 A. I don't remember that. There may have been, but  17 I don't remember it.  18 Q. Are you familiar with the provision in Senate  19 Bill 14 that allows a person to show a form of  20 identification called an election identification  21 certificate?  22 A. I think if that's referring to the provision that  23 allows a person to go to the DPS to get an ID for free,  24 if that's the title of that, yes, I've heard of that.  25 Q. Do you recall anything publicly about how this</p>	<p style="text-align: right;">200</p> <p>1 A. I would refer to you to public record with regard  2 to the specific discussions concerning specific concerns  3 about that.  4 Q. You don't have any independent recollection of  5 the various concerns that were raised?  6 A. Not sufficient to give you an accurate depiction  7 of that or accurate account of it.  8 Q. During the drafting of Senate Bill 14 or the  9 consideration of Senate Bill 14, was there any publicly  10 spoken about or discussed analysis of the cost for  11 obtaining an election identification certificate?  12 MR. SWEETEN: Don't reveal matters of  13 privilege. You can reveal matters of public record.  14 A. I think anything having to do with drafting would  15 be privileged. On the public record there was some  16 discussions about the cost and whether or not  17 appropriations would occur to cover those costs.  18 Q. (By Ms. Maranzano) And was there discussion on  19 the public record about the steps a voter might have to  20 take to obtain an election identification certificate?  21 A. There may have been. I would refer you to the  22 record for an accurate account of that.  23 Q. And was there any discussion on the public record  24 about the cost that those steps might -- costs that a  25 voter might incur in obtaining an election</p>



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<p style="text-align: right;">201</p> <p>1 identification certificate?</p> <p>2 A. I believe there was some discussion of that.</p> <p>3 Q. What discussion was that?</p> <p>4 A. You'll have to refer to the record for an</p> <p>5 accurate account of that.</p> <p>6 Q. Do you know what documents are needed to obtain</p> <p>7 an election certificate?</p> <p>8 MR. SWEETEN: As he is sitting here.</p> <p>9 MS. MARANZANO: Yes.</p> <p>10 A. You would have to refer -- I don't have an</p> <p>11 independent recollection of that.</p> <p>12 Q. (By Ms. Maranzano) You don't know, as you sit</p> <p>13 here?</p> <p>14 A. No, I don't. I would have to look it up.</p> <p>15 Q. Do you know if there was any discussion on the</p> <p>16 public record about an analysis conducted regarding</p> <p>17 individuals who would or would not possess those</p> <p>18 underlying forms of documentation.</p> <p>19 A. I don't know what you mean by "analysis." I know</p> <p>20 there was discussion at length about that issue or</p> <p>21 whether or not -- about the issue of obtaining an</p> <p>22 alternative ID. The specifics of that, though, I can't</p> <p>23 give you accurately from independent recollection and</p> <p>24 would refer you to the record.</p> <p>25 Q. Did the legislature conduct any sort of analysis</p>	<p style="text-align: right;">203</p> <p>1 Department of Public Safety.</p> <p>2 Q. And when -- is it the driver's license offices?</p> <p>3 A. I believe it is.</p> <p>4 Q. When are those offices usually -- what are the</p> <p>5 hours of those offices generally?</p> <p>6 A. I would have to call and find out. I would</p> <p>7 assume from 9:00 to 5:00 during the weekdays. But there</p> <p>8 may be -- some offices may have local rules or local</p> <p>9 opening times that are different.</p> <p>10 Q. Does Senate Bill 14 require employees to provide</p> <p>11 paid leave for somebody to obtain an identification?</p> <p>12 A. You'd have to refer to the legislation for that.</p> <p>13 Q. Do you have any independent recollection of</p> <p>14 whether that's included?</p> <p>15 A. Not at this time.</p> <p>16 Q. Are you aware of any analysis, public analysis</p> <p>17 conducted to determine if any Hispanic or blacks or any</p> <p>18 other group are more likely not to have the necessary</p> <p>19 identification under Senate Bill 14?</p> <p>20 MR. SWEETEN: I'm going to instruct you not</p> <p>21 to answer on the basis of legislative privilege.</p> <p>22 MS. MARANZANO: I asked about public</p> <p>23 analysis.</p> <p>24 MR. SWEETEN: If you're talking about public</p> <p>25 testimony about analysis, boy, I think that's been asked</p>
<p style="text-align: right;">202</p> <p>1 in a public way about -- in terms of documents that are</p> <p>2 needed to obtain election identification certificate in</p> <p>3 terms of who would have those documents?</p> <p>4 MR. SWEETEN: You can testify about matters</p> <p>5 in the record. Don't reveal matters of privilege.</p> <p>6 A. To the extent there was -- I don't know if it's</p> <p>7 the word "analysis," but there was a discussion on that</p> <p>8 in the -- on the Senate -- during the debate on the bill</p> <p>9 either at the committee level or on the Senate floor or</p> <p>10 both.</p> <p>11 Q. (By Ms. Maranzano) If the documents needed to</p> <p>12 obtain an election identification certificate have a</p> <p>13 cost to them, then would you agree that that is actually</p> <p>14 charging a voter to vote?</p> <p>15 MR. SWEETEN: Objection; don't reveal your</p> <p>16 thought process, mental impressions, opinions,</p> <p>17 motivations about the legislation in answering this</p> <p>18 question. So unless you can avoid doing that, I'm going</p> <p>19 to instruct you not to answer the question.</p> <p>20 A. An answer to that would require me to invoke my</p> <p>21 mental impressions and analysis so I would prefer to</p> <p>22 invoke the legislative privilege.</p> <p>23 Q. (By Ms. Maranzano) Do you know where a person</p> <p>24 can obtain an election identification certificate?</p> <p>25 A. Under the statute, I believe that it is the</p>	<p style="text-align: right;">204</p> <p>1 and answered a number of times, but you can go ahead and</p> <p>2 you can answer.</p> <p>3 A. I would refer you to the record on that.</p> <p>4 Q. (By Ms. Maranzano) No independent recollection?</p> <p>5 A. My independent recollection is not include enough</p> <p>6 information to be accurate to give you testimony with</p> <p>7 regard to such analysis. If it occurs on the record I</p> <p>8 would refer you to the record for an accurate account on</p> <p>9 that.</p> <p>10 Q. Are you familiar with the provisional ballot</p> <p>11 provisions in Senate Bill 14?</p> <p>12 A. If you'll point me to that provision. Refresh my</p> <p>13 memory.</p> <p>14 Q. Section 17 talks about provisional ballots.</p> <p>15 A. Section 17. I'm sorry.</p> <p>16 Q. Starts on Page 11 and goes on to Page 12.</p> <p>17 A. Okay. Section 17.</p> <p>18 Q. Uh-huh.</p> <p>19 A. I'm generally familiar with Section 17, Senate</p> <p>20 Bill 14.</p> <p>21 Q. Do you think that individuals who vote a</p> <p>22 provisional ballot, except for some narrow exceptions,</p> <p>23 need to show the same forms of ID as is required under</p> <p>24 the bill for voters who cast a regular ballot, in order</p> <p>25 for their ballot to be counted?</p>



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<p>205</p> <p>1 MR. SWEETEN: You can talk about the text of</p> <p>2 the bill. Don't reveal your thoughts and mental</p> <p>3 impressions about legislation.</p> <p>4 BY MS. MARANZANO:</p> <p>5 Q. Do you recall my question?</p> <p>6 A. Vaguely. If you'll remember -- If you'll</p> <p>7 rephrase it.</p> <p>8 Q. I'm wondering whether -- with, except for some</p> <p>9 narrow exceptions, it's essentially the same</p> <p>10 identification requirements for those who cast a</p> <p>11 provisional ballots, correct?</p> <p>12 A. No.</p> <p>13 Q. What's the difference?</p> <p>14 A. Well, I think B -- Subsection B and C provides</p> <p>15 affidavits -- an opportunity to present an affidavit --</p> <p>16 Q. So you're --</p> <p>17 THE REPORTER: I'm sorry.</p> <p>18 THE WITNESS: For the reasons stated</p> <p>19 therein.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. So Section B you're referring to is individuals</p> <p>22 who have a religious objection to being photographed?</p> <p>23 A. Right.</p> <p>24 Q. And Section C is individuals who do not have</p> <p>25 identification meeting the requirements because of a</p>	<p>207</p> <p>1 forms of identification as listed in Senate Bill 14?</p> <p>2 A. The Section 65.0541, Subdivision 1, provides that</p> <p>3 the photo ID would be required or the affidavits</p> <p>4 required as discussed earlier.</p> <p>5 Q. The affidavits for -- that we just discussed with</p> <p>6 an individual?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. Does the voter have to show their</p> <p>9 identification to a voter registrar, voter who cast a</p> <p>10 provisional ballot has to show one of the forms of</p> <p>11 required identification to a voter registrar, correct?</p> <p>12 A. I believe there's the provision in the statute.</p> <p>13 Q. Is this a voter registrar office in every county?</p> <p>14 A. I believe there is.</p> <p>15 Q. Are they usually in the county seat? Are they</p> <p>16 usually located --</p> <p>17 A. That would be normally where they would be.</p> <p>18 Q. What's the purpose of Senate Bill 14?</p> <p>19 MR. SWEETEN: You can give the general</p> <p>20 purpose.</p> <p>21 A. The general purpose is to in sure ballot</p> <p>22 integrity.</p> <p>23 Q. (By Ms. Maranzano) Based on the public record,</p> <p>24 can you tell me the basis of that statement? Your</p> <p>25 saying that's the purpose.</p>
<p>206</p> <p>1 natural disaster that was declared by the President of</p> <p>2 the United States or the governor which occur no earlier</p> <p>3 than 45 days before the date the ballot was cast and</p> <p>4 lead to the destruction of the identification; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And so other than those exceptions individuals</p> <p>8 who cast a provisional ballot need to show one of the</p> <p>9 forms required of identification?</p> <p>10 MR. SWEETEN: I'm sorry. Can you read the</p> <p>11 question back, please?</p> <p>12 (Requested question was read.)</p> <p>13 MR. SWEETEN: You can testify based upon the</p> <p>14 text of the bill don't reveal your thoughts, mental</p> <p>15 impression that would be a matter of legislative</p> <p>16 privilege. Go ahead and answer it.</p> <p>17 A. The provision for that -- for provisional ballots</p> <p>18 is contained in Section 17 and also discussed in Section</p> <p>19 18 of the bill. And those provisions would appear to</p> <p>20 provide the process for provisional ballot. What's</p> <p>21 required in the event a provisional ballot is cast with</p> <p>22 regard to identification.</p> <p>23 Q. (By Ms. Maranzano) And other than the exceptions</p> <p>24 that we've discussed, does a voter who casts a</p> <p>25 provisional ballot need to show one of the required</p>	<p>208</p> <p>1 MR. SWEETEN: That calls for matters of</p> <p>2 legislative privilege. He can testify to purpose, which</p> <p>3 he did. You're asking him now to go to the public</p> <p>4 record and do an analysis and give you the reasons that</p> <p>5 are in the public record in support of what he has</p> <p>6 stated as general purpose. And to do so would discover</p> <p>7 his mental impressions and be subject to the mental</p> <p>8 impressions. I instruct you not to answer.</p> <p>9 BY MS. MARANZANO:</p> <p>10 Q. Any other purposes of Senate Bill 14?</p> <p>11 A. That's the general purpose.</p> <p>12 Q. Can you tell me each and every purpose of Senate</p> <p>13 Bill 14?</p> <p>14 MR. SWEETEN: Asked and answered.</p> <p>15 A. I've told you the general purpose which is my</p> <p>16 response to your question.</p> <p>17 Q. (By Ms. Maranzano) So are there any other</p> <p>18 purposes?</p> <p>19 A. There are -- there is a general purpose to the</p> <p>20 statute, as I stated. And it's broad enough to include</p> <p>21 the general purpose, as I stated.</p> <p>22 Q. I would like to know each and every purpose of</p> <p>23 Senate Bill 14?</p> <p>24 MR. SWEETEN: He's answered the question.</p> <p>25 Asked and answered.</p>

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<p>209</p> <p>1 MS. MARANZANO: He hasn't answered that</p> <p>2 question.</p> <p>3 MR. SWEETEN: He's given you the purpose of</p> <p>4 the bill. Objection; asked and answered.</p> <p>5 A. The purpose of the bill is generally to prevent</p> <p>6 and preserve -- prevent fraud and observe -- preserve</p> <p>7 the integrity of the ballot.</p> <p>8 Q. (By Ms. Maranzano) And the reason why I was</p> <p>9 following up is because you say "generally." So I'm</p> <p>10 just trying to make sure I have every purpose of Senate</p> <p>11 Bill 14?</p> <p>12 A. Well, when I say "generally," means the general</p> <p>13 purpose of the bill.</p> <p>14 Q. But are there any other specific purposes of the</p> <p>15 bill?</p> <p>16 A. My testimony involves the general purpose of the</p> <p>17 bill. And I stated the general purpose of the bill.</p> <p>18 Q. But I am allowed to ask you about the legislative</p> <p>19 purpose so I think that would include any legislative</p> <p>20 purpose of Senate Bill 14?</p> <p>21 A. Well, just general purpose and legislative</p> <p>22 purpose are synonymous in this view and that's to</p> <p>23 prevent voter fraud and protect the integrity of the</p> <p>24 ballot.</p> <p>25 Q. Okay. That's good. Can you tell me, based on</p>	<p>211</p> <p>1 questions will comply with the terms and restrictions of</p> <p>2 the order. The court has a succession of four orders</p> <p>3 carved-out and explicitly told us what the areas of</p> <p>4 legislative privilege are. You continue, and I'm not --</p> <p>5 I'm using you in the broadest sense because you have</p> <p>6 been polite. But your office is continuing to ask</p> <p>7 questions in violation of this order. And at some point</p> <p>8 this -- in violation of this order, if this conduct</p> <p>9 continues we are going to have no other choice but to go</p> <p>10 to the court and seek relief from them. Because they</p> <p>11 have been clear.</p> <p>12 And this type of questioning, where you</p> <p>13 continue to ask him matters that are subject to the</p> <p>14 privilege, is inappropriate. And is in violation of the</p> <p>15 court's order. And I'm going to ask you -- I'm going to</p> <p>16 ask you here at 3:00 p.m. on the late afternoon after</p> <p>17 Senator Duncan has sat here since 9:30, I'm going to ask</p> <p>18 you to rein that in. Because we are now getting to a</p> <p>19 point where we have our sitting representatives and</p> <p>20 senators being -- basically sitting here answering</p> <p>21 questions that have been prohibited by the court. And</p> <p>22 at some point this has to end.</p> <p>23 MS. MARANZANO: Well, Mr. Sweeten our</p> <p>24 position is, absolutely, that we are complying with the</p> <p>25 court's order and, you know, I have made every effort to</p>
<p>210</p> <p>1 the public record, how Senate Bill 14 prevents fraud?</p> <p>2 MR. SWEETEN: Hold on a minute. How it</p> <p>3 prevents fraud. No, he's not going to answer that.</p> <p>4 That's subject to the legislative privilege.</p> <p>5 BY MS. MARANZANO:</p> <p>6 Q. Was there testimony on the public record about --</p> <p>7 MR. SWEETEN: Counsel, let's go to the order</p> <p>8 here.</p> <p>9 MS. MARANZANO: Yeah.</p> <p>10 MR. SWEETEN: Specifically, we are on</p> <p>11 Page 16 of 16 of the court's order. And that provision</p> <p>12 order says, "Further ordered that questions of</p> <p>13 depositions shall comply with the terms and restrictions</p> <p>14 set forth in this order.</p> <p>15 MS. MARANZANO: Yes.</p> <p>16 MR. SWEETEN: Yesterday, in two depositions</p> <p>17 held at this building, we had a sitting representative</p> <p>18 sit and answer these same types of questions until 7:00</p> <p>19 p.m. in violation of that provision of the court order.</p> <p>20 We had another witness, Representative Aliseda, who was</p> <p>21 here until 6:15 p.m. -- no, it was 7:00 because I was</p> <p>22 waiting for the attorney to come back so we could visit</p> <p>23 about other matters.</p> <p>24 Now, we've got an order from the court that</p> <p>25 explicitly prohibits and requires that deposition</p>	<p>212</p> <p>1 be very clear with the Senator today that I'm asking him</p> <p>2 questions about the public record. We've had exchanges</p> <p>3 and there have been times when I have withdrawn</p> <p>4 questions. There's been times when you have withdrawn</p> <p>5 objections. So, you know, I think we're both making</p> <p>6 good faith efforts to comply with the order.</p> <p>7 And the -- you know, all the attorneys</p> <p>8 representing the defendant in this matter are doing the</p> <p>9 same. And it's absolutely our position that we are</p> <p>10 complying with this court order.</p> <p>11 And, you know, my understanding, and</p> <p>12 obviously I wasn't involved in those depositions</p> <p>13 yesterday. My understanding is that part of the reason</p> <p>14 people were here late was because there were problems</p> <p>15 with documents that had nothing to do with questions at</p> <p>16 a deposition.</p> <p>17 MR. SWEETEN: Well, I would submit a very</p> <p>18 different view of things and I have. I've stated it.</p> <p>19 I'm simply -- I'm letting you know. And I'm making this</p> <p>20 clear on the record, that this has got -- you've got to</p> <p>21 tamper this down based upon this order, or we're going</p> <p>22 to seek relief from the court.</p> <p>23 This is -- yesterday's exercise was in</p> <p>24 violation of the court order. And we are starting to</p> <p>25 get there here. And I want you to take this very</p>



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<p style="text-align: right;">213</p> <p>1 seriously that we are doing our best.</p> <p>2 We have put these people through seven hours</p> <p>3 of depositions. You have taken the limit of time with</p> <p>4 these individuals. And this -- at some point this has</p> <p>5 to stop, or this has to be reined in, because we're</p> <p>6 going to seek redress from the court. With that, I'll</p> <p>7 let you continue with your examination of Senator</p> <p>8 Duncan. We'll continue -- continue with this exercise.</p> <p>9 But please respect the court's order with respect to the</p> <p>10 legislative privilege. It is very clear.</p> <p>11 MS. MARANZANO: I am going to continue. But</p> <p>12 I just want to say, I do not appreciate the suggestion</p> <p>13 that I am doing anything other than respecting the</p> <p>14 Court's order.</p> <p>15 BY MS. MARANZANO:</p> <p>16 Q. Senator Duncan, was Senate Bill 14 given an</p> <p>17 emergency designation by the governor?</p> <p>18 A. I believe that the Governor Perry issued an</p> <p>19 emergency declaration for legislation related to voter</p> <p>20 identification.</p> <p>21 Q. Did you or did anyone in your office have</p> <p>22 communications about Senate Bill 14's emergency</p> <p>23 designation?</p> <p>24 A. With whom?</p> <p>25 Q. With anybody.</p>	<p style="text-align: right;">215</p> <p>1 Whether he made other statements I don't know.</p> <p>2 (Exhibit No. 531-532 was marked.)</p> <p>3 BY MS. MARANZANO:</p> <p>4 Q. Senator, I am showing you what we're marking for</p> <p>5 the record as deposition Exhibit 531 and 532. Can you</p> <p>6 take a look at these and tell me if you recognize them?</p> <p>7 A. I recognize -- I don't know if I've seen 531</p> <p>8 before. I assume that I've seen 532 because it's</p> <p>9 addressed to me by Senator Van de Putte.</p> <p>10 Q. And deposition Exhibit 532, is that a letter from</p> <p>11 Lieutenant Governor Dewhurst?</p> <p>12 A. It's a letter from Governor Dewhurst to --</p> <p>13 Lieutenant Governor Dewhurst to Senator Birdwell.</p> <p>14 Q. And dated January 20, 2011?</p> <p>15 A. Correct.</p> <p>16 Q. Do you recall getting a letter similar to this</p> <p>17 yourself?</p> <p>18 A. No. But I may have.</p> <p>19 Q. Do you see that in -- do you see that it says</p> <p>20 that, "This Lieutenant Governor's intent to recognize</p> <p>21 Senator Robert Duncan for a motion to resolve the Senate</p> <p>22 into a Committee of the Whole to consider Senate Bill</p> <p>23 14"?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see it says that's going to happen on</p>
<p style="text-align: right;">214</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. What are the consequences of a bill having this</p> <p>3 designation, this emergency designation?</p> <p>4 A. I don't know of any consequences.</p> <p>5 Q. What does it mean for a bill to be designated as</p> <p>6 emergency?</p> <p>7 A. The only thing it means is that the constitution</p> <p>8 requires that you cannot take up a bill or a resolution</p> <p>9 of substance prior to the 60th day of a legislative</p> <p>10 session. Declaring an issue an emergency allows the</p> <p>11 measure to be taken up and considered before the 60th</p> <p>12 day.</p> <p>13 Q. Were there any public statements about why Senate</p> <p>14 Bill 14 was given this emergency designation?</p> <p>15 A. The only public statement that I would be aware</p> <p>16 of would be the proclamation by the governor declaring</p> <p>17 it an emergency. There may be others by others, but I'm</p> <p>18 not aware of them.</p> <p>19 Q. And in the governor's proclamation, did he give</p> <p>20 any explanation as to why he was declaring it an</p> <p>21 emergency?</p> <p>22 A. You know, I don't recall that he really did. I</p> <p>23 think -- it's in the journal and I don't remember</p> <p>24 exactly what it said. But I don't believe there was any</p> <p>25 statement with regard to considerations in the journal.</p>	<p style="text-align: right;">216</p> <p>1 Monday January 24, 2011?</p> <p>2 A. Yes.</p> <p>3 Q. Can you take a look at Exhibit -- deposition</p> <p>4 Exhibit 532?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. And can you look at the second paragraph for a</p> <p>7 minute? Do you see that that's referring to a letter</p> <p>8 from the Lieutenant Governor?</p> <p>9 A. Okay.</p> <p>10 Q. Do you see that it states that the Lieutenant</p> <p>11 Governor circulated a letter on Thursday after most</p> <p>12 senators had left for the weekend? And it stated that</p> <p>13 the Senate was going to convene as Committee of the</p> <p>14 Whole four days later to consider voter ID legislation.</p> <p>15 Do you see that?</p> <p>16 A. I see her description.</p> <p>17 Q. Is that your, based on your recollection, do you</p> <p>18 believe that that occurred?</p> <p>19 A. I don't know.</p> <p>20 Q. You don't have any recollection?</p> <p>21 A. No. It -- I don't know one way or the other. I</p> <p>22 don't recall an issue about this. Although, she did</p> <p>23 raise it in a letter to me.</p> <p>24 Q. Do you recall receiving this letter?</p> <p>25 A. Let me read it. I believe -- yeah, I remember</p>



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June 7, 2012

<p style="text-align: right;">217</p> <p>1 this. I do.</p> <p>2 Q. You do remember it?</p> <p>3 A. Yes, ma'am.</p> <p>4 Q. Did you respond to it?</p> <p>5 A. I assume I did. I always respond to Senator Van</p> <p>6 de Putte when I can. So I don't know if I did it in</p> <p>7 writing or gave her a phone call.</p> <p>8 Q. Do you -- do you recall if you disputed the way</p> <p>9 she describes the notice that was given in that</p> <p>10 paragraph that we were just looking at?</p> <p>11 A. I don't recall if I did or not.</p> <p>12 Q. As you sit here today, you don't recall if this</p> <p>13 is how the notice was provided to members?</p> <p>14 A. No, I don't. I remember this letter now. But I</p> <p>15 don't know how that happened or why it happened or what</p> <p>16 happened, quite frankly.</p> <p>17 Q. Did any opponents of Senate Bill 14 make</p> <p>18 allegations that minority members of the Senate were</p> <p>19 being excluded from participation in the debate because</p> <p>20 they weren't given enough notice?</p> <p>21 MR. SWEETEN: You can answer as to matters</p> <p>22 of the public record.</p> <p>23 A. I simply don't remember that specifically. I</p> <p>24 know if there's some correspondence to that effect, you</p> <p>25 know, there's typically -- I think there was. I think</p>	<p style="text-align: right;">219</p> <p>1 (Exhibit No. 533 was marked.)</p> <p>2 BY MS. MARANZANO:</p> <p>3 Q. I'm going to give you what we're marking as</p> <p>4 deposition Exhibit 533, which I'll represent to you is</p> <p>5 from the 2011 Senate rules. And do you see rule 5.11 D</p> <p>6 on Page 24?</p> <p>7 A. Okay.</p> <p>8 Q. Do they appear to be the same to you?</p> <p>9 A. They appear to be substantially the same, if not</p> <p>10 identical.</p> <p>11 Q. Senator, based on the public record, can you tell</p> <p>12 me why you were the person who introduced the resolution</p> <p>13 to bring Senate Bill 14 to the Committee of the Whole?</p> <p>14 MR. SWEETEN: Don't answer the question. It</p> <p>15 would call for you to reveal matters of legislative</p> <p>16 privilege, of why it would relate to mental processes</p> <p>17 about the legislative process. If there's something</p> <p>18 expressed specifically on the public record you can</p> <p>19 refer to.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. Let me actually ask you this. Is there a</p> <p>22 procedure by which there's a process for who would bring</p> <p>23 a bill to the floor -- or who would bring a bill to the</p> <p>24 Committee of the Whole, is that a set procedure in the</p> <p>25 Senate?</p>
<p style="text-align: right;">218</p> <p>1 this letter right here, basically is some protest of the</p> <p>2 speed in which the bill was moving. But other than</p> <p>3 that, I don't recall anything.</p> <p>4 Q. And you don't recall whether you had a public</p> <p>5 response to that?</p> <p>6 A. I don't know. I may have. I mean, I typically</p> <p>7 would respond to Senator Van de Putte by phone call or</p> <p>8 formal letter. Not only this issue, but other issues as</p> <p>9 well.</p> <p>10 Q. Do you recall that in 2011 there was a similar</p> <p>11 rule, that's what we discussed in the 2009 session, that</p> <p>12 allowed for voter identification legislation to be</p> <p>13 brought to the floor without a two-thirds majority vote?</p> <p>14 A. I recall it. I think Senate Rule 5.11 remained</p> <p>15 in place.</p> <p>16 Q. So Section D of Rule 5.11 would have been the</p> <p>17 same in 2011 as it was in 2009?</p> <p>18 A. I don't believe there were any conceptual changes</p> <p>19 in it.</p> <p>20 Q. Would it refresh your recollection to look at the</p> <p>21 rule?</p> <p>22 A. It would be helpful to look at both the rules.</p> <p>23 I've got one here. Well, I've got the original exhibit</p> <p>24 you previously provided.</p> <p>25 Q. I'm going to give you.</p>	<p style="text-align: right;">220</p> <p>1 A. No.</p> <p>2 Q. Okay. Is that a decision that the Lieutenant</p> <p>3 Governor makes?</p> <p>4 A. Yes.</p> <p>5 Q. And did you preside over the Committee of the</p> <p>6 Whole's consideration of Senate Bill 14?</p> <p>7 A. Yes.</p> <p>8 Q. And that was the same rule, and it contained the</p> <p>9 same responsibilities as what you testified to in 2009?</p> <p>10 A. Yes.</p> <p>11 Q. During the debate and the consideration by the</p> <p>12 Committee of the Whole, did anybody raise public</p> <p>13 concerns about the impact Senate Bill 14 would have on</p> <p>14 minority voters?</p> <p>15 A. Generally those issues were discussed. An</p> <p>16 accurate account would be contained in the record.</p> <p>17 Q. And do you recall -- actually we'll get to that</p> <p>18 in a second. Never mind. Have you had occasion to</p> <p>19 review the Georgia and Indiana voter identification</p> <p>20 laws?</p> <p>21 MR. SWEETEN: Objection; asked and answered.</p> <p>22 And don't reveal your mental processes when you're</p> <p>23 evaluating legislation, your motivations that would be</p> <p>24 subject to legislative privilege. Instruct not to</p> <p>25 answer if your answer would reveal that.</p>



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<p style="text-align: right;">221</p> <p>1 A. The answer is, I have reviewed materials that 2 relate to the Indiana an Georgia laws and those cases. 3 I can't recall if I've actually read the cases verbatim 4 or -- and I know I have not done an analysis of those 5 cases verbatim. 6 Q. (By Ms. Maranzano) Is out your belief, as you 7 sit here today, that the Georgia identification law is 8 similar to Senate Bill 14? 9 A. I can't answer that. 10 MR. SWEETEN: Okay. I was going to say if 11 this is going to reveal your legislative processes about 12 Senate Bill 14 don't answer it. But if you don't -- if 13 it's not. 14 A. I can't answer it for two reasons. One, it would 15 require analysis. And number two is I haven't -- I'm 16 not prepared give you and accurate answer on that. It 17 would have to be contained -- it would have to be 18 something contained in the record. 19 Q. (By Ms. Maranzano) Are you familiar with the 20 Indiana identification law? 21 A. Generally. 22 MS. MARANZANO: Can you mark this? Thank 23 you. 24 (Exhibit No. 534 was marked.) 25 BY MS. MARANZANO:</p>	<p style="text-align: right;">223</p> <p>1 Q. Do you recall what those discussions entailed? 2 A. No. You would have to refer to the record for an 3 accurate description. 4 Q. Do you recall introducing any amendments to 5 Senate Bill 14? 6 A. Do I recall? 7 Q. Uh-huh. 8 A. Introducing amendments, I did not introduce 9 amendments that I recall. 10 MS. MARANZANO: Could we have this marked? 11 (Exhibit No. 535 was marked.) 12 BY MS. MARANZANO: 13 Q. I'm showing you what we're marking as deposition 14 Exhibit 535. Can you take a look and tell me if you 15 recognize this? 16 A. Well, this is apparently a transcription of the 17 hearing on Senate Bill 14, January 26, 2011. 18 Q. And can you look on that first page by Duncan and 19 take a look at what -- at that paragraph? 20 A. Yes. That indicates that I apparently introduced 21 amendment 40. 22 Q. Does that refresh your recollection? 23 A. Well, yeah. Because apparently Senator Davis had 24 an amendment. And now that I'm looking at this it 25 appears that, according to the record, I was amending</p>
<p style="text-align: right;">222</p> <p>1 Q. Senator, I'm showing you what we're marking as 2 deposition Exhibit 534. Can you take a look at this? 3 Does this appear to be the Indiana voter identification 4 law? 5 A. The title of this document is Public Law 6 109-2005. And it appears to be an excerpt from the 7 Indiana code. I don't know the authenticity of this. I 8 assume you're representing it to be an authentic version 9 of the law and I have no reason to doubt that. 10 Q. Can you take a look at Page 2015 for me, please? 11 And I want to direct your attention to the Subsection C, 12 but if you need to look at the preceding page it might 13 give you the context for that. 14 A. Okay. 15 Q. Do you see that a voter who cast a provisional 16 ballot is able to execute an affidavit saying they're 17 indigent and their provisional ballot would be counted? 18 A. Yes. 19 Q. And they would not have to show the required 20 identification? 21 A. Yes. 22 Q. Do you recall public discussions or discussions 23 on public record about this portion of the Indiana code 24 during the debate of Senate Bill 14? 25 A. I believe there was.</p>	<p style="text-align: right;">224</p> <p>1 her amendment. 2 Q. I'm sorry. You were amending her amendment? 3 A. I believe that's what this is. 4 Q. And can you tell me, based on public discussions, 5 why you thought that was a provision that you wanted to 6 add to Senate Bill 14? 7 MR. SWEETEN: Don't answer the question. It 8 calls for matters of legislative privilege. You're 9 asking why in his thought process. 10 BY MS. MARANZANO: 11 Q. Did you have any discussions on the public record 12 about this amendment? 13 MR. SWEETEN: You can answer. 14 A. Yes. 15 Q. (By Ms. Maranzano) Do you recall the substance 16 of those discussions? 17 A. Those discussions were stated in the record. 18 Q. And is that the record that's right here in front 19 of us? 20 A. It is. 21 Q. And do you see that, in that paragraph that we 22 were looking at, you point out that this amendment is 23 very similar to, if not identical to, the provisions of 24 Indiana law? Do you see that? And then it says, "and 25 it would be a fail safe privilege for those persons,"</p>



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June 7, 2012

<p style="text-align: right;">225</p> <p>1 which I assume you're referring to indigent persons?</p> <p>2 A. That's what -- well, I will refer you to the</p> <p>3 record, if that accurately states what I said, I assume.</p> <p>4 Q. Can you tell me what the purpose of this</p> <p>5 amendment was?</p> <p>6 MR. SWEETEN: Don't answer the question.</p> <p>7 You can give general purpose of legislation. Don't go</p> <p>8 into the purpose of the amendment, legislative</p> <p>9 privilege.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. Can you tell me if this provision was included in</p> <p>12 the final version of Senate Bill 14?</p> <p>13 A. According to the record it was adopted, but I</p> <p>14 don't know -- and I assume that it was in the engrossed</p> <p>15 version, but I don't know. You would have to go to the</p> <p>16 record.</p> <p>17 Q. Well, do you want the take a look at Senate Bill</p> <p>18 14 and tell me if you see it in the bill?</p> <p>19 A. In the enrolled and signed version?</p> <p>20 Q. Uh-huh.</p> <p>21 A. The bill will speak for itself I'm sure, but --</p> <p>22 and that would have been -- I'm trying to see where that</p> <p>23 was amended. But I don't recall that it made it through</p> <p>24 the House. But let me look and see.</p> <p>25 Q. Let me direct your attention to that paragraph</p>	<p style="text-align: right;">227</p> <p>1 A. I don't remember any. But that doesn't -- I</p> <p>2 could have. I just don't remember any specific</p> <p>3 amendments. When this bill came back over we were in a</p> <p>4 lot of other different issues. But I don't remember</p> <p>5 being told specifically that it came out. And I just</p> <p>6 now remembered that we put the amendment on. So I don't</p> <p>7 recall being involved at that stage of any decision to</p> <p>8 remove the amendment.</p> <p>9 Q. Did you have any communication with anybody about</p> <p>10 whether a provision like this, the exemption of for</p> <p>11 indigency, would increase the chances that Senate Bill</p> <p>12 14 would be precleared?</p> <p>13 MR. SWEETEN: Don't reveal matters of</p> <p>14 privilege. I think this asks for more than a general</p> <p>15 subject matter discussion. If you -- so I would</p> <p>16 instruct you not to answer as phrased. If you want to</p> <p>17 change the preface of the question, I think we can</p> <p>18 probably get you and answer that would give you the</p> <p>19 foundational information you seek.</p> <p>20 BY MS. MARANZANO:</p> <p>21 Q. I think you stated previously you don't recall</p> <p>22 having conversations about this amendment generally?</p> <p>23 A. Well, apparently I did because I put an amendment</p> <p>24 on the bill. And as chairman of the committee, I</p> <p>25 typically work to improve a bill and listen to people.</p>
<p style="text-align: right;">226</p> <p>1 that we were just looking at. It points out that this</p> <p>2 is for individuals who cast a provisional ballot.</p> <p>3 A. Right.</p> <p>4 Q. So that might help direct your attention to the</p> <p>5 portion of Senate Bill 14 about provisional ballots.</p> <p>6 A. You might remind me of what provision that is.</p> <p>7 Q. And you said you don't recall that it did make it</p> <p>8 through. Is that what you said?</p> <p>9 A. Well, it appears if you're looking at Section</p> <p>10 60 -- or Section 14 of Senate Bill 14, that -- for</p> <p>11 amendment No. 40, which was a Senate amendment to Senate</p> <p>12 Bill did not get in the enrolled version of the bill</p> <p>13 signed by the governor.</p> <p>14 Q. Do you know when this provision was removed from</p> <p>15 the bill?</p> <p>16 A. No, I do not. You know, you can narrow it down</p> <p>17 to either in the House or in a conference committee. I</p> <p>18 don't think this bill went to a conference committee.</p> <p>19 Q. Do you -- did you have any communications with</p> <p>20 any other legislators about this amendment -- well, this</p> <p>21 amendment first of all, at all?</p> <p>22 A. Not that I recall.</p> <p>23 Q. So I take it then, you didn't have any</p> <p>24 conversations about this amendment getting removed from</p> <p>25 the bill?</p>	<p style="text-align: right;">228</p> <p>1 And so obviously there was some reason to put that on</p> <p>2 the bill. The reasons that are there are stated here.</p> <p>3 What conversations I had with folks, with other members</p> <p>4 on this particular amendment were probably based upon</p> <p>5 Indiana law, as stated in the public record. But my</p> <p>6 specific conversations with Senator Fraser or others,</p> <p>7 Senator Davis, I do not recall specifically what they</p> <p>8 were. To provide you, especially, to provide you with</p> <p>9 an accurate account of those conversations. The</p> <p>10 statement contained in the record is my conversation</p> <p>11 with regard to Amendment 40.</p> <p>12 Q. Do you recall any of the other amendments that</p> <p>13 were proposed for Senate Bill 14?</p> <p>14 A. If I don't recall my own, I probably don't recall</p> <p>15 the others. But I do recall -- at least I don't think</p> <p>16 there were amendments in 2009, but I do recall, I</p> <p>17 thought we did some amendments in 2011 and obviously we</p> <p>18 did.</p> <p>19 MS. MARANZANO: Okay. Let's mark this. I'm</p> <p>20 sorry. Wrong one. Can you mark this?</p> <p>21 (Exhibit No. 536 was marked.)</p> <p>22 BY MS. MARANZANO:</p> <p>23 Q. Senator, I'm showing you what we're marking as</p> <p>24 deposition Exhibit 536. Do you recognize this?</p> <p>25 A. Well, I recognize the title, as apparently it's</p>



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June 7, 2012

<p style="text-align: right;">229</p> <p>1 an excerpt from the Senate journal for January 26, 2011.</p> <p>2 Q. And can you take a look at Page 118, and I'm</p> <p>3 going to direct your attention to floor Amendment 12.</p> <p>4 Do you see that that amendment would have prohibited</p> <p>5 state agencies from charging fees for issuance of any</p> <p>6 acceptable form of photo identification under Senate</p> <p>7 Bill 14, or for underlying documentation that would be</p> <p>8 required to obtain such an ID?</p> <p>9 A. I believe the provision -- or the amendment poses</p> <p>10 a similar concept to what you described.</p> <p>11 Q. And do you see below that amendment there's a</p> <p>12 recorded motion to table and a vote on that motion to</p> <p>13 table?</p> <p>14 A. That's correct.</p> <p>15 Q. And you voted, according to the public record, in</p> <p>16 favor of the motion to table?</p> <p>17 A. According to the record, that's how I voted.</p> <p>18 Q. Did you take any public position as to how this</p> <p>19 amendment would have impeded the goals of Senate Bill</p> <p>20 14?</p> <p>21 A. I don't recall if I did or not.</p> <p>22 Q. You have no recollection?</p> <p>23 A. No.</p> <p>24 Q. Can you turn to Page 134, Amendment No. 30?</p> <p>25 A. Page what?</p>	<p style="text-align: right;">231</p> <p>1 A. That's what Subparagraph 7 states, yes.</p> <p>2 Q. And can you look below, I think it goes on to the</p> <p>3 next page, that there was a motion the table that</p> <p>4 amendment?</p> <p>5 A. Correct.</p> <p>6 Q. And you publicly voted in favor of this motion to</p> <p>7 table; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Did you take -- did you make any public</p> <p>10 statements or take a public position about your</p> <p>11 opposition of this amendment?</p> <p>12 A. I don't recall doing so.</p> <p>13 Q. Were there any public statements made about</p> <p>14 concerns that a study, such as the one proposed by this</p> <p>15 amendment, would actually show there was a disparate</p> <p>16 impact on minority voters?</p> <p>17 A. I'm confident that whenever floor Amendment 30</p> <p>18 was laid out on the Senate floor that the author and the</p> <p>19 sponsors of the amendment made certain public statements</p> <p>20 regarding -- or in support of the amendment.</p> <p>21 Q. And my question was about whether public</p> <p>22 statements were made expressing a concern that to do</p> <p>23 such a study would show there was a disparate impact?</p> <p>24 A. You would have to look at the record to determine</p> <p>25 whether or not there were public statement on that. I</p>
<p style="text-align: right;">230</p> <p>1 Q. 130. Do you see floor Amendment No. 30?</p> <p>2 A. I see that.</p> <p>3 Q. Amendment by Senator Ellis as well as Senator</p> <p>4 Rodriguez and Senator Uresti. Can you take a look at</p> <p>5 that amendment? Do you see that this amendment would</p> <p>6 have required the secretary of State to conduct a study</p> <p>7 that would have included information about the number of</p> <p>8 eligible voters who were prevented from voting because</p> <p>9 of a lack of possessing an identification?</p> <p>10 A. I'll only agree to what it says. I'm not --</p> <p>11 you're paraphrasing it. And I'm not familiar enough</p> <p>12 after two years, after a year, whatever it is, of the</p> <p>13 language to agree with your paraphrasing. But I will</p> <p>14 agree it is an amendment that requires the Secretary of</p> <p>15 State to produce an annual report. And it has specific</p> <p>16 requirements with seven subsections of requirements for</p> <p>17 the Secretary of State to either collect data or do</p> <p>18 analysis and report back to the legislature.</p> <p>19 Q. And can you look at Subsection 7, and that</p> <p>20 actually requires that "the report include an analysis</p> <p>21 by subgroup of whether the enhanced identification</p> <p>22 requirements were being accepted to vote, produce a</p> <p>23 disparate impact on women, the elderly, persons with</p> <p>24 disabilities, students or persons of racial or ethnic</p> <p>25 minorities." Is that correct?</p>	<p style="text-align: right;">232</p> <p>1 don't recall independently.</p> <p>2 Q. Can you look at Page 129 for me? And</p> <p>3 specifically at floor Amendment No. 29. Do you see that</p> <p>4 amendment it requires driver's license offices to be</p> <p>5 open until 7:00 p.m. on a weekday during each week and</p> <p>6 at least four or more hours on two Saturdays of each</p> <p>7 month?</p> <p>8 A. I see that.</p> <p>9 Q. Do you see below that there's a motion to table</p> <p>10 that amendment?</p> <p>11 A. Yes.</p> <p>12 Q. And you voted in favor of that motion to table?</p> <p>13 A. Correct.</p> <p>14 Q. And did you take any public position as to how</p> <p>15 this amendment would have impeded the goals that you</p> <p>16 described earlier of Senate Bill 14?</p> <p>17 A. I don't remember if -- whether I did or not.</p> <p>18 Probably not.</p> <p>19 Q. Did you make any public statements about that?</p> <p>20 A. No, I don't think I did.</p> <p>21 Q. Do you recall when the Senate passed Senate Bill</p> <p>22 14?</p> <p>23 A. It was probably in January of 2011 as this</p> <p>24 particular -- well, somewhere near the January 26, 2011</p> <p>25 proceeding that's reflected in the Senate journal. But</p>



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<p>233</p> <p>1 I don't recall the exact date.</p> <p>2 Q. Can you tell me as a general matter, is it</p> <p>3 unusual for legislation to be introduced, considered and</p> <p>4 passed within two weeks?</p> <p>5 A. Not necessarily.</p> <p>6 Q. Has that happened -- how many times has that</p> <p>7 happened during your time in the Senate?</p> <p>8 A. No. My freshman year I introduced the Boll</p> <p>9 Weevil. Actually I introduced it, but I didn't even</p> <p>10 take it up until the Supreme Court had overruled or had</p> <p>11 held an existing law unconstitutional until April 30th.</p> <p>12 And I think we headed out of Senate to the House in two</p> <p>13 and a half weeks. So it can be done, if it's necessary,</p> <p>14 on emergency orders. On orders that are emergency, they</p> <p>15 can move fairly quickly depending on the consensus in</p> <p>16 the bill. Just depends on all those things. So</p> <p>17 generally it's not -- it's -- it's not -- it's -- it</p> <p>18 happens -- it can and does happen that legislation moves</p> <p>19 fairly quickly.</p> <p>20 Q. I'm sorry. I missed the piece of legislation you</p> <p>21 worked on?</p> <p>22 A. Boll Weevil.</p> <p>23 MR. SWEETEN: Boll Weevil.</p> <p>24 BY MS. MARANZANO:</p> <p>25 Q. Okay.</p>	<p>235</p> <p>1 Q. All right. We'll come back to that. Did you</p> <p>2 ever have any discussions -- strike that. To the best</p> <p>3 of your knowledge, based on public record, did the</p> <p>4 legislature take steps to determine whether SB 14 might</p> <p>5 disproportionately impact minority voters?</p> <p>6 MR. SWEETEN: Don't reveal matters of</p> <p>7 legislative privilege. If you can answer the question</p> <p>8 without doing so, you can. If you cannot, then instruct</p> <p>9 you not to answer.</p> <p>10 A. I can't accurately respond to the question based</p> <p>11 on independent recollection. I would refer you to the</p> <p>12 record.</p> <p>13 Q. (By Ms. Maranzano) Okay. Was any part of the</p> <p>14 purpose of Senate Bill 14 to decrease the number of</p> <p>15 Hispanic voters?</p> <p>16 A. No.</p> <p>17 Q. Was any part of the purpose of Senate Bill 14 to</p> <p>18 decrease the number of any other group of minority</p> <p>19 voters?</p> <p>20 A. No. The purpose is as I've stated.</p> <p>21 Q. Was any part of the purpose of Senate Bill 14</p> <p>22 partisan?</p> <p>23 A. No. The purpose is as I stated.</p> <p>24 Q. Did the purpose of photo ID in Texas evolve</p> <p>25 overtime?</p>
<p>234</p> <p>1 A. Actually that's a pretty interesting case.</p> <p>2 Q. We'll talk about that off the record. And you</p> <p>3 said it depends on the consensus; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. Is it unusual for a bill that is highly</p> <p>6 contentious to pass -- to be introduced, considered and</p> <p>7 passed within two weeks?</p> <p>8 A. Depends.</p> <p>9 Q. And other than this legislation that yourself</p> <p>10 mentioned that you worked on, are there other</p> <p>11 examples -- during the time you've been in the Senate,</p> <p>12 about how many times have you seen this happen?</p> <p>13 A. Couldn't tell you. Special orders. Other issues</p> <p>14 that come up late in the session that need to be</p> <p>15 addressed. So, you know, I couldn't. Just too much to</p> <p>16 me. Too long and too much.</p> <p>17 Q. Are you familiar with the Conference Committee's</p> <p>18 consideration as to Senate Bill 14?</p> <p>19 A. Remind me who was on the Conference Committee,</p> <p>20 please?</p> <p>21 Q. I would have to look it up. I'm not sure I had</p> <p>22 that document in front of me. It would refresh your</p> <p>23 recollection if you knew if members of the Conference</p> <p>24 Committee?</p> <p>25 A. Yeah.</p>	<p>236</p> <p>1 A. I'm not sure I understand that. What do you</p> <p>2 mean?</p> <p>3 Q. Did the purpose of the photo ID bills that we</p> <p>4 talked about in different legislative sessions change?</p> <p>5 A. Not that I'm aware of.</p> <p>6 MR. SWEETEN: Hold on a second. I think</p> <p>7 that you're asking to compare and contrast different</p> <p>8 bills from different sessions. I think that the</p> <p>9 question is vague. I think it's compound. I also think</p> <p>10 that it calls upon him to give you an analysis of how</p> <p>11 one bill compares with another which would require him</p> <p>12 to write his mental impressions and would be subject to</p> <p>13 the legislative privilege. He will testify -- I think</p> <p>14 you've asked him all day about the different bills and</p> <p>15 what he thought the general purpose was. He has</p> <p>16 testified to all of that.</p> <p>17 BY MS. MARANZANO:</p> <p>18 Q. Are you aware of any legislators making any</p> <p>19 statements about illegal aliens voting?</p> <p>20 A. No.</p> <p>21 Q. Have you ever heard a Texas State legislator who</p> <p>22 voted in favor of Senate Bill 14 say it would prevent</p> <p>23 racial or ethnic minorities from voting in Texas?</p> <p>24 A. No.</p> <p>25 MR. SWEETEN: Don't reveal any</p>



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<p>1 communications you've had with any Senate or staff in 2 answering these questions. 3 A. I've had no such communications is what I'm 4 trying to say. I want to be clear on that. 5 Q. (By Ms. Maranzano) I didn't hear the very last 6 thing you said. You said you've had no such -- 7 A. I have not been a party to any such 8 communications or overheard or heard any such 9 communications. 10 Q. Does Senate Bill 14 do anything to address 11 allegations of fraud in the vote by mail system? 12 MR. SWEETEN: Don't answer the question. 13 Requires you to reveal your mental thought processes and 14 motivations by the voter process. 15 MS. MARANZANO: I'm just asking him about 16 the text of the bill. 17 MR. SWEETEN: You're asking if the text of 18 the bill -- 19 MS. MARANZANO: Addresses voter fraud and 20 vote by mail. 21 MR. SWEETEN: You can answer it based upon 22 the text. 23 A. The text of the bill is to achieve the general 24 purpose of the bill, which is to enhance voter -- their 25 ballot box integrity and prevent fraud.</p>	<p>237</p> <p>1 it do anything in terms of the goals that you've stated 2 that is not already covered by federal or State law? 3 MR. SWEETEN: Don't answer that. Calls for 4 matters of legislative privilege. Instruct not to 5 answer. 6 BY MS. MARANZANO: 7 Q. Do you know how somebody -- do you know what 8 forms of identification a voter registration applicant 9 in Texas needs to show under the current system to 10 register to vote? 11 A. I know there are -- there are a -- there's a 12 laundry list of items that a voter needs to show. I 13 couldn't recite them specifically for you right now. 14 You would have to show me the statute. 15 Q. Is there anything in the public record about the 16 insufficiency of that current system, in terms of the 17 identification of voter registration an applicant needs 18 to show? 19 A. If there is it would have certainly been stated 20 in the debate of Senate Bill 362 or Senate Bill 14. 21 Q. Can you give me just a minute? I think I'm just 22 about done. I just want to go through my notes real 23 fast. 24 A. Sure. 25 (Brief recess.)</p> <p>239</p>
<p>1 Q. (By Ms. Maranzano) So I'm just asking if 2 anything in the bill, based on the face of the bill, 3 addresses vote by mail voter fraud? 4 A. I've answered the question to the best of my 5 ability. 6 Q. Okay. 7 A. Given -- go ahead. Re-ask the question. 8 Q. I know we talked about that the purpose of Senate 9 Bill 14 is about integrity of the electoral system and 10 voter fraud. And I'm just wondering if the specific 11 area of vote by mail fraud is addressed by Senate Bill 12 14, based on the face of the bill? 13 MR. SWEETEN: But I think your question is 14 asking for him to give you the potential effect of 15 Senate Bill 14 and would therefore, to some extent could 16 reveal his mental processes, opinions and thoughts about 17 the legislation. So to some -- if to that extent I 18 would instruct you not to reveal it if it implements 19 matters of legislative privilege. 20 A. I don't know, sitting here today. I believe that 21 voter -- that mail in ballots is covered under other 22 legislation and not necessarily Senate Bill 14, if my 23 recollection is correct. 24 Q. (By Ms. Maranzano) Do you believe that -- well, 25 strike that. Based on the face of Senate Bill 14, does</p> <p>238</p>	<p>1 BY MS. MARANZANO: 2 Q. Back on the record. Senator, do you know how 3 many investigated incidents of in person voter fraud 4 have occurred in the state of Texas in the last 5 20 years? 6 A. I don't have a statistic available to me at this 7 time to give you an accurate answer on that. 8 Q. Do you know how many convictions for in person 9 voter fraud have been obtained in the last 20 years in 10 the State of Texas? 11 A. I don't have that information available to me at 12 this time. 13 Q. Do you know if those statistics were part of the 14 public debate on Senate Bill 14? 15 A. If they were, they would be in the record. 16 Q. At any time since the passage of Senate Bill 14, 17 have you come to believe that it was passed with 18 discriminatory purpose? 19 A. No. 20 Q. Have you come to believe it was passed with a -- 21 at any time since the passage of Senate Bill 14, have 22 you come to believe that it would have a discriminatory 23 impact on minority voters? 24 A. No. 25 Q. If called to testify at trial, will you testify</p> <p>240</p>



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<p>241</p> <p>1 that Senate Bill 14 has no discriminatory purpose?</p> <p>2 A. Yes.</p> <p>3 Q. And will you testify that it has no</p> <p>4 discriminatory effect?</p> <p>5 A. Yes.</p> <p>6 Q. Are there any answers that you gave today that</p> <p>7 now you would like to change?</p> <p>8 A. Other than the fact that I forgot that I had</p> <p>9 offered an amendment. That's the only one I think. But</p> <p>10 I just simply again, don't typically offer those kind of</p> <p>11 amendments. But that was corrected and I remember --</p> <p>12 once you showed it to me I remembered it. It did</p> <p>13 refresh my memory.</p> <p>14 Q. Is there anything about earlier today you</p> <p>15 couldn't recall that you are now able to recall?</p> <p>16 A. No. That was the main thing.</p> <p>17 Q. Okay. I'm now going to turn the questioning over</p> <p>18 to Mr. Brazil. As I mentioned earlier, we are going to</p> <p>19 leave this deposition open because we believe there may</p> <p>20 be some documents that the court has ordered to be</p> <p>21 produced that have not yet been produced. So for the</p> <p>22 moment we're leaving the deposition open?</p> <p>23 A. Thank you.</p> <p>24 MS. MARANZANO: Thank you.</p> <p>25</p>	<p>243</p> <p>1 A. I haven't -- I haven't looked at that.</p> <p>2 Q. Did your office do any independent polling of</p> <p>3 your constituents on the issue of voter ID?</p> <p>4 A. I don't believe.</p> <p>5 MR. SWEETEN: Hold on a minute. Don't</p> <p>6 answer questions that are subject to the legislative</p> <p>7 privilege. So that would -- potentially reveal thought</p> <p>8 process, mental impressions about legislation. So don't</p> <p>9 answer if it would to that.</p> <p>10 BY MR. BRAZIL:</p> <p>11 Q. Well, let me make my question more specific. Did</p> <p>12 your office send out any mailers, request any e-mails</p> <p>13 from your constituents, anything of that sort, in the</p> <p>14 public domain about voter ID?</p> <p>15 MR. SWEETEN: That sounds like a public</p> <p>16 statement so that would be -- you can go ahead and</p> <p>17 testify.</p> <p>18 A. I don't remember doing that. We don't typically</p> <p>19 do those sorts of mailers to our constituent.</p> <p>20 Q. (By Mr. Brazil) Did your staff ever keep records</p> <p>21 of the telephone calls from your constituents, pro or</p> <p>22 con, against the voter ID bill?</p> <p>23 A. I don't know if they did on that bill. We've</p> <p>24 done it before on other bills, but I couldn't tell you</p> <p>25 whether or not we had a log on that.</p>
<p>242</p> <p>1 EXAMINATION</p> <p>2 BY MR. BRAZIL:</p> <p>3 Q. Senator, I just have a few questions and I'll do</p> <p>4 it from here. So if I don't speak loud enough just ask</p> <p>5 me to speak up. Okay?</p> <p>6 A. Yes, sir.</p> <p>7 Q. I only have about four areas to briefly cover so</p> <p>8 I'll jump around and if I lose you, just say so. Fair</p> <p>9 enough?</p> <p>10 A. Yes, sir.</p> <p>11 Q. I believe you said earlier this morning that your</p> <p>12 Senatorial district is 36 counties?</p> <p>13 A. 46.</p> <p>14 Q. I'm sorry?</p> <p>15 A. 46.</p> <p>16 Q. 46. Do all 46 of your counties have DPS offices?</p> <p>17 A. I do not know the -- I couldn't accurately give</p> <p>18 you and answer right now. I don't know that they all</p> <p>19 do. I'm not sure. I can't tell you today.</p> <p>20 Q. I think you saw in the public record that 77 of</p> <p>21 the 254 counties do not have DPS offices. Do you recall</p> <p>22 that?</p> <p>23 A. I don't recall those specific numbers.</p> <p>24 Q. And you are not sure how many of your counties do</p> <p>25 or do not have offices?</p>	<p>244</p> <p>1 Q. Did you attend any, what we call town meetings,</p> <p>2 anything of that sort where you specifically discussed</p> <p>3 the voter ID bill?</p> <p>4 A. I'm sure I did.</p> <p>5 Q. Do you recall anything specific, any group that</p> <p>6 you addressed or invited to address?</p> <p>7 A. No. Generally, we have a fairly by-partisan</p> <p>8 group of people that come to our town hall meetings in</p> <p>9 these rural counties, even in Lubbock and other areas.</p> <p>10 So I typically and generally speak about a number of</p> <p>11 issues that were considered during the legislative</p> <p>12 session and/or that we are considering or thinking about</p> <p>13 considering. And -- but I never have -- I don't recall</p> <p>14 ever having a specific town hall meeting just dealing</p> <p>15 with voter ID. There's a lot of other issues that we</p> <p>16 generally cover in those types of meetings.</p> <p>17 Q. Did you ever -- were you ever invited to speak</p> <p>18 publicly to a group just on the issue of voter ID?</p> <p>19 A. I don't remember if I did. If I did I didn't do</p> <p>20 it.</p> <p>21 Q. Have you seen any independent studies regarding</p> <p>22 alleged voter fraud in Texas?</p> <p>23 MR. SWEETEN: Don't reveal your thoughts and</p> <p>24 mental processes regarding legislation. That would be</p> <p>25 legislative -- that would be subject to the legislative</p>



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<p style="text-align: right;">245</p> <p>1 privilege.</p> <p>2 MR. BRAZIL: How would that be privileged?</p> <p>3 Are you contending that somehow he got some secret</p> <p>4 information or something that's not public? Some</p> <p>5 independent study that he received that the public</p> <p>6 didn't receive?</p> <p>7 MR. SWEETEN: What I'm saying is that the</p> <p>8 Senator's thought process, his motivation, his analysis</p> <p>9 related to any legislation, would be subject to the</p> <p>10 legislative privilege. And I think your question asks</p> <p>11 him to reveal his analysis about legislation,</p> <p>12 potentially to divulge conversations that he's had that</p> <p>13 would be subject to the privilege and therefore, that</p> <p>14 would be a matter of legislative privilege. That's what</p> <p>15 I'm saying.</p> <p>16 BY MS. MARANZANO:</p> <p>17 Q. Well, my question was very specific. Have you</p> <p>18 seen any independent studies of alleged voter fraud in</p> <p>19 Texas?</p> <p>20 MR. SWEETEN: You can reveal matters of</p> <p>21 public record. Don't reveal matters of privilege.</p> <p>22 A. The investigations related to voter fraud or that</p> <p>23 I have seen are those that are contained in the public</p> <p>24 record of the Senate on this issue.</p> <p>25 Q. (By Mr. Brazil) Okay. Do you recall whether or</p>	<p style="text-align: right;">247</p> <p>1 removed, but I don't know where it was removed.</p> <p>2 Q. And you don't know, I assume, who removed it?</p> <p>3 A. Correct.</p> <p>4 Q. Did you serve on any committees or have you ever</p> <p>5 served on any committee that specifically investigated</p> <p>6 alleged voter fraud in Texas?</p> <p>7 A. The only -- the interim study that we did in 2006</p> <p>8 had a charge that reflected that we were to look into</p> <p>9 and study the voter fraud. You can look at how it's</p> <p>10 specifically worded. That's the only committee that</p> <p>11 I've worked on or served on where that issue that was</p> <p>12 taken up, I believe. I don't think any other committee</p> <p>13 I've served on has taken that issue.</p> <p>14 Q. Have you served on any committee that</p> <p>15 specifically investigated the effect the voter ID bill</p> <p>16 would have on any group of the voting population. For</p> <p>17 example, the elderly, minorities. Have you served on</p> <p>18 any committee that specifically investigated what effect</p> <p>19 this bill may have on their voting?</p> <p>20 MR. SWEETEN: Don't reveal any analysis</p> <p>21 regarding legislation, nor factual information that you</p> <p>22 did or did not consider in supporting or opposing a</p> <p>23 bill. That would be subject to a legislative privilege.</p> <p>24 A. The studies or -- that would relate to your</p> <p>25 question would be the interim study that was a part of</p>
<p style="text-align: right;">246</p> <p>1 not the public record contains any study by an</p> <p>2 independent agency, such as a university or some entity,</p> <p>3 that's been hired independent of the legislature on</p> <p>4 alleged voter fraud?</p> <p>5 A. If there is such study that it was included in</p> <p>6 the record either on Senate Bill 362 or the interim</p> <p>7 study that we did, or on Senate Bill 14.</p> <p>8 Q. I think you've already said you're not aware of</p> <p>9 the number of prosecutions for illegal voting or voter</p> <p>10 fraud in Texas over the last ten years. Is that fair?</p> <p>11 A. I couldn't give you the numbers.</p> <p>12 Q. Did I here you say that Amendment No. 40, floor</p> <p>13 Amendment No. 40, did not make it into the final bill</p> <p>14 that was signed into law?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And did you say that the Senate Bill did</p> <p>17 or did not go to Conference Committee?</p> <p>18 A. It apparently did. And counsel's asked me about</p> <p>19 that. But I'm not -- I don't recall any deliberations</p> <p>20 in regard to the Conference Committee, other than we had</p> <p>21 a Conference Committee. I don't believe I was on the</p> <p>22 Conference Committee.</p> <p>23 Q. Okay. But somewhere in conference, floor</p> <p>24 Amendment No. 40 was removed?</p> <p>25 A. I don't know that to be a fact. I know it was</p>	<p style="text-align: right;">248</p> <p>1 the charge for the State Affairs Committee in 2006.</p> <p>2 Other than that, I don't recall anything.</p> <p>3 Q. I think you said earlier that Senate Bill 14 was</p> <p>4 to -- I'm trying to quote you, "ensure voter and ballot</p> <p>5 integrity." Is that correct?</p> <p>6 A. I think ballot integrity is more accurate.</p> <p>7 Q. Okay. I have reviewed, I think on the record and</p> <p>8 many of the depositions that have been taken in this</p> <p>9 case, Senator. Can you point to any area of the record</p> <p>10 going back, you know, five or six years where there's</p> <p>11 any real substantial evidence statewide voter fraud in</p> <p>12 Texas?</p> <p>13 MR. SWEETEN: Don't reveal -- don't answer</p> <p>14 the question. It would require you to reveal matters of</p> <p>15 legislative privilege. Straight out of the order that</p> <p>16 would include what factual information a legislator did</p> <p>17 or did not consider in supporting or opposing a bill.</p> <p>18 That's legislatively privileged.</p> <p>19 A. I'll follow counsel's advice on this.</p> <p>20 Q. (By Mr. Brazil) Well, I think my question</p> <p>21 basically was what was in the public domain, the</p> <p>22 hearings, the record, if we stay in that vein, if we</p> <p>23 stay in that train of thought, can you -- what in your</p> <p>24 opinion is the most outstanding evidence that you</p> <p>25 believe supports this allegation of voter fraud in</p>



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Robert Duncan

June 7, 2012

<p style="text-align: right;">249</p> <p>1 Texas?</p> <p>2 MR. SWEETEN: Don't answer the question.</p> <p>3 That calls for matters of legislative privilege. You're</p> <p>4 asking him to weigh the evidence which is part of his</p> <p>5 analysis in considering legislation. You're asking for</p> <p>6 him to say what's the most -- what's the most relevant</p> <p>7 evidence. And that is very clearly asking for his</p> <p>8 mental impressions and thoughts about a bill. And</p> <p>9 instruct you not to answer on that basis.</p> <p>10 BY MS. MARANZANO:</p> <p>11 Q. Can you point to anything in the public record</p> <p>12 that indicates substantial voter fraud in Texas?</p> <p>13 MR. SWEETEN: Same instruction.</p> <p>14 MR. BRAZIL: I'm sorry?</p> <p>15 MR. SWEETEN: Same instruction.</p> <p>16 MR. BRAZIL: So you're contending that the</p> <p>17 privilege covers what's in the public record. Is that</p> <p>18 what you're stating?</p> <p>19 MR. SWEETEN: I didn't state that. I</p> <p>20 said --</p> <p>21 MR. BRAZIL: Let me ask him again.</p> <p>22 MR. SWEETEN: No, let me finish my</p> <p>23 statement. You're asking him what was substantial</p> <p>24 evidence, which goes to his mental processes. Now,</p> <p>25 remember the court said that what factual information a</p>	<p style="text-align: right;">251</p> <p>1 Q. What occurred in the public record that supported</p> <p>2 the allegation of voter fraud?</p> <p>3 MR. SWEETEN: It's the same instruction.</p> <p>4 It's the same question.</p> <p>5 BY MR. BRAZIL:</p> <p>6 Q. Would you agree with me that there's nothing in</p> <p>7 the public record to support the allegation of voter</p> <p>8 fraud in Texas?</p> <p>9 MR. SWEETEN: Don't answer the question.</p> <p>10 The question ask for what was your support for a certain</p> <p>11 issue that calls for matters of the legislative</p> <p>12 privilege.</p> <p>13 BY MR. BRAZIL:</p> <p>14 Q. Who put on -- or presented evidence in the public</p> <p>15 record of voter fraud in Texas?</p> <p>16 A. The record I think reflects that in 2006 there</p> <p>17 was evidence in the interim committee. I do not recall</p> <p>18 specifically who put on evidence. I do believe the</p> <p>19 Attorney General's office did testify in 2009 and also</p> <p>20 2011 with regard to those issues. I would refer you to</p> <p>21 the record for an accurate account of their testimony.</p> <p>22 Q. Do you remember how many specific instances of</p> <p>23 voter fraud they presented?</p> <p>24 A. I would refer you to the record for an accurate</p> <p>25 recollection of that.</p>
<p style="text-align: right;">250</p> <p>1 legislator did or did not consider in supporting or</p> <p>2 opposing a bill is part of the legislative privilege.</p> <p>3 So I'm instructing him that the court order and the</p> <p>4 legislative privilege covers the question that you're</p> <p>5 asking. And I'm instructing him not to answer the</p> <p>6 question as posed.</p> <p>7 BY MR. BRAZIL: Okay. Well --</p> <p>8 MR. SWEETEN: You can -- if you want to ask</p> <p>9 him was there evidence or an issue came up in the public</p> <p>10 record, I don't have a problem with it. When you start</p> <p>11 asking him what was substantial, how did he weigh it,</p> <p>12 that goes to his mental processes. He's not answering</p> <p>13 that question.</p> <p>14 BY MR. BRAZIL:</p> <p>15 Q. Was there any evidence in the public record, in</p> <p>16 your opinion, to support the allegation of voter fraud</p> <p>17 in Texas?</p> <p>18 MR. SWEETEN: I think that's -- it's the</p> <p>19 same for the same reason that question is inferred. He</p> <p>20 can refer to evidence in the public record that existed.</p> <p>21 He's not going to talk about what was more or less</p> <p>22 important to him. He can talk about what occurred in</p> <p>23 the public record. That is legislatively privileged.</p> <p>24 Instruction not the answer.</p> <p>25 BY MR. BRAZIL:</p>	<p style="text-align: right;">252</p> <p>1 Q. Did you serve on any committee that specifically</p> <p>2 investigated what segment of the population would be</p> <p>3 most affected by this bill?</p> <p>4 MR. SWEETEN: Objection. Calls for matters</p> <p>5 of legislative privilege.</p> <p>6 BY MR. BRAZIL:</p> <p>7 Q. Did any committee you serve on investigate that</p> <p>8 publicly?</p> <p>9 A. The Senate Committee on State Affairs in 2006</p> <p>10 carried out its assignment under its charge as stated in</p> <p>11 the public record. And I will refer you to that record.</p> <p>12 The Senate Committee of the Whole in 2009, 2011 I</p> <p>13 believe, the public record reflects a discussion of</p> <p>14 those issues. I'll refer you to the record for those --</p> <p>15 for the...</p> <p>16 Q. There was a lot of discussion and a lot of</p> <p>17 questions about how this bill progressed and the rules</p> <p>18 and what rules were changed, et cetera. If we just look</p> <p>19 at this legislative session, how many bills were handled</p> <p>20 in a similar manner to Senate Bill 14?</p> <p>21 MR. SWEETEN: Objection; compound. You can</p> <p>22 answer based on matters of public record.</p> <p>23 A. I don't recall that there were any other</p> <p>24 committee -- or any other bills that were considered by</p> <p>25 a Committee of the Whole to that extent it would have</p>



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<p>253</p> <p>1 been different.</p> <p>2 Q. (By Mr. Brazil) What was the urgency of this</p> <p>3 bill? What was the emergency? What precipitated the</p> <p>4 need for this type of bill and the way was handled?</p> <p>5 MR. SWEETEN: Objection; calls for matters</p> <p>6 of legislative privilege. Don't answer the question.</p> <p>7 BY MR. BRAZIL:</p> <p>8 Q. Is there anything in the public record that you</p> <p>9 can point to that would support the urgency or the</p> <p>10 emergency or the special treatment of this bill?</p> <p>11 MR. SWEETEN: Objection. He's asking you to</p> <p>12 find evidence that supports something that calls for</p> <p>13 your mental impressions or thoughts about legislation.</p> <p>14 Don't answer the question as posed.</p> <p>15 MR. BRAZIL: I'll pass the witness.</p> <p>16 MR. SWEETEN: I have no questions for the</p> <p>17 witness. We'll reserve questions to the time of trial.</p> <p>18 (Deposition concluded.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>255</p> <p>1 I, ROBERT DUNCAN, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4 ROBERT DUNCAN</p> <p>5 THE STATE OF TEXAS )</p> <p>6 )</p> <p>7 COUNTY OF _____ )</p> <p>8 Before me, _____, on this day</p> <p>9 personally appeared ROBERT DUNCAN, known to me (or</p> <p>10 proved to me under oath or through</p> <p>11 (description of identity card or other document) to be</p> <p>12 the person whose name is subscribed to the foregoing</p> <p>13 instrument and acknowledged to me that they executed the</p> <p>14 same for the purposes and consideration therein</p> <p>15 expressed.</p> <p>16 Given under my hand and seal of office this ____</p> <p>17 day of _____, _____.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>256</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF COLUMBIA</p> <p>3 STATE OF TEXAS )</p> <p>4 )</p> <p>5 ) NO. 12-CV-128</p> <p>6 ) (DST, RMC, RLW)</p> <p>7 )</p> <p>8 ERIC H. HOLDER, JR., )</p> <p>9 In his official )</p> <p>10 Capacity as Attorney )</p> <p>11 General of the United )</p> <p>12 States, ET AL )</p> <p>13 *****</p> <p>14 CERTIFICATE FROM THE</p> <p>15 ORAL DEPOSITION OF</p> <p>16 ROBERT DUNCAN</p> <p>17 JUNE 7, 2012</p> <p>18 *****</p> <p>19 I, Janalyn Reeves, a Certified Shorthand Reporter</p> <p>20 in and for the State of Texas, do hereby certify that</p> <p>21 the foregoing deposition is a full, true and correct</p> <p>22 transcript;</p> <p>23 That the foregoing deposition of ROBERT DUNCAN, the</p> <p>24 Witness, hereinbefore named was at the time named, taken</p> <p>25 by me in stenograph on June 7, 2012, the said Witness</p> <p>having been by me first duly cautioned and sworn to tell</p> <p>the truth, the whole truth, and nothing but the truth,</p> <p>and the same were thereafter reduced to typewriting by</p> <p>me or under my direction. The charge for the completed</p> <p>deposition is \$_____ due from Defendant.</p> <p>( ) That pursuant to the Federal Rules of Civil</p> <p>Procedure, the Witness shall have 30 days after being</p>
<p>254</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 RE: STATE OF TEXAS VS. HOLDER</p> <p>3</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>256</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF COLUMBIA</p> <p>3 STATE OF TEXAS )</p> <p>4 )</p> <p>5 ) NO. 12-CV-128</p> <p>6 ) (DST, RMC, RLW)</p> <p>7 )</p> <p>8 ERIC H. HOLDER, JR., )</p> <p>9 In his official )</p> <p>10 Capacity as Attorney )</p> <p>11 General of the United )</p> <p>12 States, ET AL )</p> <p>13 *****</p> <p>14 CERTIFICATE FROM THE</p> <p>15 ORAL DEPOSITION OF</p> <p>16 ROBERT DUNCAN</p> <p>17 JUNE 7, 2012</p> <p>18 *****</p> <p>19 I, Janalyn Reeves, a Certified Shorthand Reporter</p> <p>20 in and for the State of Texas, do hereby certify that</p> <p>21 the foregoing deposition is a full, true and correct</p> <p>22 transcript;</p> <p>23 That the foregoing deposition of ROBERT DUNCAN, the</p> <p>24 Witness, hereinbefore named was at the time named, taken</p> <p>25 by me in stenograph on June 7, 2012, the said Witness</p> <p>having been by me first duly cautioned and sworn to tell</p> <p>the truth, the whole truth, and nothing but the truth,</p> <p>and the same were thereafter reduced to typewriting by</p> <p>me or under my direction. The charge for the completed</p> <p>deposition is \$_____ due from Defendant.</p> <p>( ) That pursuant to the Federal Rules of Civil</p> <p>Procedure, the Witness shall have 30 days after being</p>



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<p>257</p> <p>1 notified by certified mail, return receipt requested, by</p> <p>2 the deposition officer that the original deposition</p> <p>3 transcript is available in her office for review and</p> <p>4 signature by the Witness and if any corrections made are</p> <p>5 attached hereto;</p> <p>6 () That by agreement of counsel, a reading condensed</p> <p>7 copy of the deposition transcript along with the</p> <p>8 full-size original changes and Signature Sheet has been</p> <p>9 sent to _____ on _____ for review and</p> <p>10 signature within 30 days and if any corrections returned</p> <p>11 are attached hereto;</p> <p>12 () That by agreement of counsel, the deposition</p> <p>13 officer is instructed to release the original deposition</p> <p>14 transcript to _____ on _____, for review and</p> <p>15 signature, and the deposition officer is thereafter</p> <p>16 released of any further responsibility with regard to</p> <p>17 the original.</p> <p>18 () That the Witness shall have thirty (30) days for</p> <p>19 review and signature of the original transcript and if</p> <p>20 any corrections returned are attached hereto.</p> <p>21 () That the signed transcript () was () was not</p> <p>22 received from the Witness within 30 days.</p> <p>23 () That the examination and signature of the Witness</p> <p>24 is waived by the Witness and the parties;</p> <p>25 That the amount of time used by each party at the</p>	<p>258</p> <p>1 deposition is as follows:</p> <p>2 Ms. Maranzano - 5 hours 34 minutes</p> <p>3 Mr. Brazil - 16 minutes</p> <p>4 Mr. Sweeten - no time</p> <p>5 I further certify that I am neither counsel for,</p> <p>6 related to, nor employed by any of the parties in the</p> <p>7 action in which this proceeding was taken, and further</p> <p>8 that I am not financially or otherwise interested in the</p> <p>9 outcome of the action.</p> <p>10 WITNESS MY HAND, this the _____ day</p> <p>11 of _____, A.D., 2012.</p> <p>12 _____</p> <p>13 JANALYN REEVES</p> <p>14 Cert. No. 3631</p> <p>15 Expires Dec. 12</p> <p>16 100 Congress</p> <p>17 Suite 220</p> <p>18 Austin, Texas 78701</p> <p>19 (512)634-1980</p> <p>20 Firm Registration No. 283</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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